SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. 624

EARLE C. MOODY, ET AL., APPELLANTS,

vs.

RICHMOND M. FLOWERS, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA

INDEX

	Original	Print
Record from the United States District Court for the Middle District of Alabama		
Complaint	1	1
Exhibit "1"—Act No. 9 passed by the 1957 Regular Session of the Legislature of Alabama	20	19
Exhibit "2"—Map of Houston County showing the division thereof into Beats	25	27
Exhibit "3"—Letter dated April 27, 1965 from Mayor of City of Dothan to State Senator Charles H. Adams	26	28
Exhibit "4"—Letter dated April 27, 1965 from Mayor of City of Dothan to Honorable Robert J. Stembridge, State House of Representatives	29	32

RECORD PRESS, PRINTERS, NEW YORK, N. Y., DECEMBER 22, 1966

	Original	Print
Record from the United States District Court for the Middle District of Alabama—Continued		
Order designating Three-judge Court	32	35
Answer of defendant, Roy Mayhall	34	36
Motion of Attorney General of Alabama to dismiss	35	37
Motion of William G. Hause to dismiss	37	38
Motion of Carl E. Sellers, et al., to dismiss	39	39
Motion to strike name of J. B. Davis from motion to dismiss, etc.	41	41
Answer of Thomas H. Brigham	42	42
Order granting motion to strike, etc.	43	43
Order re filing of briefs	44	44
Order consolidating cases	45	45
Answer of Alfred J. Saliba	46	46
Answer of defendant Richmond J. Flowers	47	47
Answer of Carl E. Sellers, et al.	50	49
Motion of plaintiffs for judgment on pleadings	55	54
Opinion, Lynne, J.	57	56
Dissenting opinion, Johnson, J.	66	65
Order dismissing cause	71	72
Transcript of evidence	75	73
Appearances	76	74
Colloquy between Court and counsel	77	75
Testimony of Harvey Hicks—		
direct	84	80
Statement of Attorney General	94	88
Testimony of Harvey Hicks—		
cross	95	89
redirect	109	99
Carl Sellers—		
direct	110	100
cross	123	110
redirect	143	125
recross	146	127
Parnell Lewis—		
direct	148	128
cross	151	131
redirect	151	131

	Original	Print
Record from the United States District Court for the Middle District of Alabama—Continued		
Transcript of evidence—Continued		
Exhibits:		
Plaintiff's Exhibit No. 5—Resolution No. 3220 of the Board of Commissioners of the City of Dothan	154	133
Plaintiff's Exhibit No. 6—Official List of qualified voters as of April 1, 1966 for Houston County, Ala.	159	138
Defendant's Exhibit No. 1—Excerpts from minutes of the regular meetings of the Board of Revenue and Control of Houston County, Alabama, held March 28, 1966, February 10, 1964 and February 8, 1965	161	140
Notice of appeal to the Supreme Court of the United States	167	148
Cross-designation of record	176	153
Docket entries	179	155
Clerk's certificate (omitted in printing)	182	159
Order noting probable jurisdiction	183	159

[fol. 1]

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA (SOUTHERN DIVISION)

Civil Action No. 860-S

EARLE C. MOODY, as Mayor of the City of Dothan, Alabama, and PARNELL S. LEWIS and JAMES P. HALL, as members of the Board of Commissioners of the City of Dothan, Alabama, and EARLE C. MOODY, PARNELL S. LEWIS and JAMES P. HALL, individually, for themselves, jointly and severally, and for all others similarly situated, Plaintiffs,

vs.

RICHMOND M. FLOWERS, Attorney General of the State of Alabama; ROY MAYHALL, Chairman of the Alabama State Democratic Executive Committee; THOMAS H. BRIGHAM, Chairman of the Alabama State Republican Executive Committee: CARL E. SELLERS, Judge of Probate of Houston County, Alabama; JAMES HERRING, Sheriff of Houston County, Alabama; WILLIAM G. HAUSE, Chairman of the Houston County Democratic Executive Committee; ALFRED J. SALIBA, Chairman of the Houston County Republican Executive Committee; and W. G. BOND, J. W. CALHOUN, W. H. HICKS, W. E. YANCE, and J. B. DAVIS, as members of the Board of Revenue and Control of Houston County, Alabama, Defendants.

COMPLAINT—Filed December 27, 1965

Come the plaintiffs, Earle C. Moody, as Mayor of the City of Dothan, Alabama, and Parnell S. Lewis and James

[File endorsement omitted]

P. Hall, as members of the Board of Commissioners of the City of Dothan, Alabama, and Earle C. Moody, Parnell S. Lewis and James P. Hall, individually, and respectfully represent unto the Court as follows:

[fol. 2] I

A. That this Court has original jurisdiction of this action, and that the Plaintiffs have the right to bring this suit under the Civil Rights Act, 17 Stat. L. 13, and 16 Stat. L. 144; 42 U. S. Code, Sections 1983 and 1988, as follows:

"Section 1983. Civil action for deprivation of rights.

Every person, who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in any action at law, suit in equity or other proper proceeding for redress." (R. S. Sec. 1979).

"Section 1988. Proceedings in vindication of civil rights.

The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this Chapter and Title 18, for the protection of all persons in the United States in their civil rights and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect . . ." (R. S. Sec. 722).

B. In addition, this Court has jurisdiction under 62 Stat. L. 932, 28 U. S. Code, Section 1343(3), which is as follows:

"Section 1343. Civil rights and elective franchise

The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

. . . . . .

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom, or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States."

[fol. 3]

II

That the plaintiff, Earle C. Moody, is the duly elected, qualified and now acting Mayor and President of the Board of Commissioners of the City of Dothan, Alabama, said Board of Commissioners being the legally constituted governing body of said City; that plaintiff, Parnell S. Lewis, is a duly elected, qualified and now acting commissioner on the Board of Commissioners of said City of Dothan, Alabama; that plaintiff, James P. Hall, is a duly elected, qualified and now acting member of the board of commissioners of said City of Dothan, Alabama; that each of the Plaintiffs is a citizen of the United States of America and of the State of Alabama and is a resident of the City of Dothan in Houston County, Alabama, is a taxpayer and duly qualified and registered elector in said State, County and City and is entitled to vote in primary, general and special elections in said City, County and State.

That plaintiffs, jointly and severally, bring this action in their representative capacity as duly elected officials of said City of Dothan and on their own behalf, individually, and on behalf of all other qualified electors residing in the said City of Dothan who are similarly situated.

III

That each of the defendants is a citizen of the United States of America and of the State of Alabama.

That defendant Richmond M. Flowers is a resident of Montgomery, Alabama, and is the duly elected, qualified and now acting Attorney General of the State of Alabama, with his office in the City of Montgomery, Montgomery County, Alabama. The Attorney General of Alabama is a constitutional officer, a part of the executive branch of the government of said State (Sec. 112 of Article V of the Constitution of Alabama of 1901) and "shall perform such duties as may be prescribed by law" (Ibid., Sec. 137). [fol. 4] Among other duties, the Attorney General of Alabama is charged by law to:

Appear in the courts of the United States when so required by the Governor, in writing (Title 55, Sec. 228, Code of Alabama of 1940, as amended): institute and prosecute all civil actions necessary to protect the rights of the State (Ibid., Sec. 229): advise Judges of Probate as to the law of Alabama (Ibid., Sec. 240), his written opinion protecting the county officer receiving it from liability for official action performed in accordance therewith (Ibid., Sec. 241): direct and control all litigation concerning the interests of the State or a department thereof and (with the approval of the Governor) hire counsel therefor (Ibid., Sec. 244).

That defendants Roy Mayhall and Thomas H. Brigham are the duly elected, qualified and acting Chairmen of the Alabama State Democratic Executive Committee and of the Alabama State Republican Executive Committee, respectively, and reside in Walker and Jefferson Counties, Alabama, respectively. Among other duties, the Chairman of the State Executive Committee of a party in Alabama is charged by law to:

Certify an election not to come under the primary election law (Title 17, Section 336, Code of Alabama of 1940, as amended); appoint, when authorized and empowered by the State Executive Committee of a political party, subcommittees to look after, supervise and conduct primary elections and do any and all things which the State Execu-

tive Committee and the Chairman thereof could do under the provisions of Chapter 2 of Title 17, Code of Alabama of 1940, as amended (Ibid., Section 394).

Defendant Carl E. Sellers is a resident of Dothan, Alabama, and is the duly elected, qualified and acting Judge of Probate of Houston County, Alabama. Judges of Probate of the State of Alabama are constitutional officers and are a part of the judicial branch of government (Sec. 139 [fol. 5] of Article VI of the Constitution of Alabama of 1901). The Judge of Probate has authority "to exercise such other powers as are, or may be, conferred on him by law" (Title 13, Sec. 297, Code of Alabama of 1940, as amended, see, also, Ibid., Sec. 271-312). Among other duties directly connected with the holding of primary, special and general elections in Alabama, the Judge of Probate is charged by law to:

Prepare and keep in his office an alphabetical list of the registered voters by precincts, districts and wards and certify same to the Secretary of State (Title 17, Sec. 38, Code of Alabama of 1940, as amended); cause to be delivered to, and inspect at each voting place immediately preceding each regular election, an alphabetical list of all persons in such precinct who have paid all poll taxes which are due and an alphabetical list of all registered voters of such precinct (Ibid., 138); receive certification of nominations by political parties for county officers as well as certification of those independent candidates properly nominated therefor by petitions of electors, and cause the names of such nominees to be printed upon ballots utilized in his county (Ibid., Sec. 145) cause the proper ballot labels to be placed on all voting machines used in county elections and to place such machines in proper order for voting (Ibid., Sec. 101); to cause the printing of all ballots, blank poll lists, certificates of results, oaths, and any other stationery and blank forms necessary in the conduct of an election and to insure the delivery thereof by the sheriff of the county to the inspectors of the election of such election supplies

(Ibid., 186); receive the original public declaration of the results of the election of county officers, record the same and provide certified copies thereof (Ibid., Sec. 200).

[fol. 6] Defendant James Herring is a resident of Dothan, Alabama, and is the duly elected, qualified and now acting sheriff of Houston County, Alabama. Sheriffs are constitutional officers in the State of Alabama and are part of the executive branch of government (Sec. 138 of Article V of the Constitution of Alabama of 1901). Said Sheriff has authority "to perform such other duties as are, or may be imposed by law." (Title 54, Sec. 5(5), Code of Alabama of 1940, as amended). Among other duties, such sheriff is charged by law to:

Give notice at least thirty days before each election by publication in some newspaper in the county where the same is to be held (Title 17, Sec. 130, Code of Alabama of 1940, as amended); provide each polling place with booths or compartments for the convenience of the electors in the preparation of their ballots (Ibid., 164); act with the Judge of Probate and the Clerk of the Circuit Court of the County as an appointing board to appoint the necessary election officials to act at the place of holding elections in each precinct (Ibid., Sec. 120).

Defendants W. G. Bond, J. W. Calhoun, W. H. Hicks, W. E. Yance and J. B. Davis are each residents of Houston County, Alabama, and, in addition to the Judge of Probate of Houston County, Alabama, as Chairman and ex officio member, they constitute the duly elected, qualified and now acting members of said Board of Revenue and Control of Houston County, Alabama, representing said Board of Revenue and Control Districts No. 1, 2, 3, 4 and 5, respectively. Said Board of Revenue and Control designates the places for holding elections in Houston County, Alabama, and provides for installing as many voting machines or boxes as are needed in each voting place. (Title 17, Sec. 84, Code of Alabama of 1940, as amended.)

[fol. 7] That defendant, William G. Hause, is a resident of Dothan, Alabama, and is the duly elected, qualified and now acting Chairman of the Houston County Democratic Executive Committee. That defendant, Alfred J. Saliba, is a resident of Dothan, Alabama, and is the duly elected, qualified and now acting Chairman of the Houston County Republican Executive Committee. Any person desiring to submit his name to the voters in a primary election as a party candidate for a county office must, not later than March 1 next preceding the holding of such primary election, file his declaration of candidacy in the form prescribed by the governing body of the party with the Chairman of the County Executive Committee of such party (Title 17, Sec. 348, Code of Alabama of 1940, as amended); and the Chairman of the County Executive Committee of each party entering such primary election shall, not less than fifty-five days prior to the date of holding the election, certify to the Probate Judge the names of all the candidates of such party for nomination to county offices in such primary election (Ibid., Sec. 344).

That this action is brought against aforesaid defendants in their respective official capacities. That there is a common question of law involved, namely, the constitutionality of Act No. 9 of the 1957 Regular Session of the Legislature of Alabama (Vol. 1 page 30 et seq., Acts of Alabama, Regular Session of 1957) approved by the Governor of the State of Alabama on May 24, 1957, and the constitutionality of the apportionment of the Board of Revenue and Control of Houston County, Alabama, under Sections 1 and 2 of said Act No. 9.

IV

That under the provisions of aforesaid Act No. 9 of the Legislature of Alabama, Regular Session of 1957, plaintiffs and those similarly situated are denied the right to [fol. 8] equal suffrage in free and equal elections, which right is guaranteed them by the Constitution of the State of

Alabama, and are denied the equal protection of the laws, as guaranteed by both the Constitution of the State of Alabama and by the Fourteenth Amendment to the Constitution of the United States, all as is hereinafter more fully alleged; and plaintiffs bring this action on their own behalf and on behalf of all duly registered and qualified electors of the City of Dothan, Alabama, who are similarly situated, under the provisions of Section 2201 of Title 28, U. S. C., for a declaration of their rights and the declaration of the validity or invalidity of aforesaid Act No. 9 of the Legislature of Alabama, Regular Session of 1957, which created the Board of Revenue and Control of Houston County, Alabama, as the governing body of said County, and, especially, of Section 2 of said Act (which divides Houston County, Alabama into five Board of Revenue and Control districts and specifies the beats or precincts in each such district, thereby apportioning the District Commissioners on said Board of Revenue and Control), and for a declaration of their rights and of the validity or invalidity of such apportionment under said Act, and for all injunctive relief as may be proper to assure them and all qualified electors of the City of Dothan, Alabama, free and equal suffrage, liberty, property and equal protection of the laws, which are now and have been for many years denied them by the defendants and their predecessors in office who have complied with certain unconstitutional statutes, including aforesaid Act No. 9, House Local Bill No. 599, (General and Local acts of Alabama, Regular Session of 1949, page 931 et seq.) approved September 19, 1949 by the Governor of Alabama, and Senate Local Bill No. 294, Local Acts of Alabama of 1939 (General and Local laws of the Legislature of Alabama, page 133 et seq.).

[fol. 9] V

Section 1 of the Fourteenth Amendment to the Constitution of the United States of America provides, in pertinent part, as follows:

"... No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

This provision of the Constitution of the United States guarantees and protects the right of all qualified citizens within a state to vote in elections within the state, including county elections, and further guarantees them that their vote shall be equally effective with any other votes cast in such state or county elections.

VI

That the Constitution and Laws of the State of Alabama and of the United States of America establish, define and guarantee to these plaintiffs, as well as to all other qualified electors in the City of Dothan and Houston County, Alabama, free and equal suffrage in free and equal elections.

(1) Section 2 of Article I of the Constitution of Alabama of 1901 invests all political power in the people, as follows:

"That all political power is inherent in the people and all free governments are founded on their authority, and instituted for their benefit; and that, therefore, they have at all times an inalienable and indefeasible right to change their form of government in such manner as they may deem expedient."

(2) Section 177 of Article VIII of the Constitution of Alabama of 1901 defines qualified voters who are guaranteed the right to free and equal elections and suffrage, as follows:

"Every male citizen of this state who is a citizen of the United States, and every male resident of foreign

birth, who, before the ratification of this constitution, [fol. 10] shall have legally declared his intention to become a citizen of the United States, twenty-one years old or upwards, not laboring under any of the disabilities named in this article, and possessing the qualifications required by it, shall be an elector, and shall be entitled to vote at any election by the people; provided, that all foreigners who have legally declared their intention to become citizens of the United States, shall, if they fail to become citizens thereof at the time they are entitled to become such, cease to have the right to vote until they become such citizens."

(3) That the right of free and equal suffrage is further guaranteed by Section 33 of Article I of the Constitution of Alabama of 1901, as follows:

"The privilege of suffrage shall be protected by laws regulating elections, and prohibiting, under adequate penalties, all undue influences from power, bribery, tumult, or other improper conduct."

(4) That the right of free and equal suffrage is further guaranteed by Section 12, Title 17 of the Alabama Code of 1940, as amended, as follows:

"Qualification of elector to vote. Every citizen of this state who is a citizen of the United States and every resident of foreign birth, who, before the ratification of the present Constitution of the state, shall have legally declared his or her intention to become a citizen of the United States, twenty-one years old or upwards, not laboring under any of the disabilities named in Section 15 of this title, and who shall have resided in this state at least one year, in the county six months, and in the precinct or ward three months, immediately preceding the election at which he offers to vote, and who shall have been duly registered as an elector, and shall have paid, on or before the first day

of February next preceding the date of the election at which he or she offers to vote, all poll taxes due from them for the next two preceding years, shall be an elector, and shall be entitled to vote at any election by the people."

VII

That on May 24, 1957, the Governor of the State of Alabama approved Act No. 9 passed by the 1957 Regular Session of the Legislature of Alabama, a copy of which Act is attached hereto, marked Exhibit "1", incorporated in and made a part hereof.

[fol. 11]

VIII

(1) The number of qualified electors in each of the fourteen beats of Houston County, Alabama, as shown in the list thereof prepared by the Judge of Probate of Houston County, Alabama, 1960, is as follows: Beat 1, 460; Beat 2, 225; Beat 3, 9,046; Beat 4, 539; Beat 5, 275; Beat 6, 825; Beat 7, 419; Beat 8, 630; Beat 9, 187; Beat 10, 925; Beat 11, 203; Beat 12, 379; Beat 13, 551; Beat 14, 146. Based on said list of qualified electors for 1960, the five Board of Revenue and Control districts of Houston County, Alabama, contained the following number of qualified electors: District No. 1, comprised of Beats 1, 2 and 4, 1,224; District No. 2, comprised of Beats 5, 6, 7 and 11, 1,722; District No. 3, comprised of Beats 10, 12 and 14, 1,450; District No. 4, comprised of Beats 8, 9 and 13, 1,368; District No. 5, comprised of Beat 3, 9,046; the corporate limits of the City of Dothan, Alabama, and the boundaries of aforesaid District No. 5 and of said Beat No. 3 being identical. A map of Houston County showing the division thereof into Beats is attached hereto, marked Exhibit "2", incorporated in and made a part hereof.

(2) Pursuant to the provisions of Act 386 of the Legislature of Alabama, Regular Session of 1953 (Vol. 1, Page 457, et seq.) the Board of Registrars of Houston County,

Alabama, purged the list of registered electors of said County of the names of all deceased, non-residents and otherwise disqualified electors of said County, so that the official list of qualified electors of Houston County, Alabama, for 1964, as prepared by the Judge of Probate of said County, shows the aggregate number of qualified electors in the fourteen beats of said County for 1964, as follows: Beat No. 1, 399; Beat No. 2, 214; Beat No. 3, 7,920; Beat No. 4, 485; Beat No. 5, 221; Beat No. 6, 620; Beat [fol. 12] No. 7, 358; Beat No. 8, 539; Beat No. 9, 177; Beat No. 10, 789; Beat No. 11, 158; Beat No. 12, 328; Beat No. 13, 452; Beat No. 14, 125. According to said official list of qualified voters of Houston County, Alabama, for 1964, prepared by the Judge of Probate of Houston County, Alabama, the aggregate number of qualified electors in aforesaid five Board of Revenue and Control Districts, was the following: District No. 1, 1,098; District No. 2, 1,356; District No. 3, 1232; District No. 4, 1,168; District No. 5, 7,920.

(3) According to the 1960 official United States census, the total population of Houston County, Alabama, was 50,718 and the total population of said City of Dothan was 31,440, said population of said City of Dothan comprising approximately 61% of the total population of said Houston County.

(4) The estimated population of Houston County, Alabama, on January 1, 1965, was 55,790, and the estimated population of the City of Dothan on said date was 36,753.

(5) According to the official records in the office of the Tax Assessor of Houston County, Alabama, the total assessed value of property in said county for ad valorem taxes in 1965 amounted to $30,621,030.00, and $21,217,120.00 of such value represented property located within said City of Dothan, being approximately 69% of said total assessed value of said property in Houston County, Alabama.

(6) That under aforesaid Act No. 9, Exhibit "1" hereto, the residents and qualified electors of said City of Dothan are, and have been, represented by only one commissioner on said Board of Revenue and Control of Houston County, and have only a 20% voice in the levying of taxes on said residents and electors residing in said City of Dothan and in the expenditure of the tax monies collected by the said Houston County.

[fol. 13]

IX

Aforesaid Board of Revenue and Control of Houston County, Alabama, created and established by aforesaid Act No. 9, Exhibit "1" hereto, is the local governing body of said Houston County, and possesses broad governing powers granted to it by the laws of the State of Alabama, including, among others, the original and unlimited jurisdiction in relation to the establishment, change or discontinuance of roads, bridges, causeways, ferries and stock law districts within the County, except as otherwise provided by law, and the following powers: to direct control of the property of the County as it may deem expedient according to the law; to levy a general tax, for general, and a special tax, for special, county purposes; to appropriate and expend tax monies paid to the county by all taxpayers, including the residents and qualified electors of said City of Dothan for the following purposes, among others: to pay all accounts and claims chargeable against the County, to pay for the improvement of sanitary conditions in the County, to promote and enforce health and quarantine laws in the County, to create a sinking fund for the payment of bonds or other indebtedness of the County, to purchase all necessary equipment for constructing and maintaining public roads in the County, and to exercise such other powers as are, or may be, given by law, (Sections 11 and 12 of Title 12, Code of Alabama of 1940, as amended).

X

(1) In an effort to obtain by legislative process the opportunity for equal participation and representation and for an equally effective voice by the qualified electors of said City of Dothan in the election of the members of the governing body of said Houston County, plaintiff, Earle C. Moody, as Mayor of said City of Dothan, on April 27, [fol. 14] 1965, prior to the convening of the 1965 Regular Session of the Legislature of the State of Alabama on May 4, 1965, wrote and sent by U. S. mail, properly addressed and postage prepaid, a letter to Honorable Charles H. Adams, the Senator of Houston County, Alabama, in said Legislature, a copy of which letter is attached hereto, marked Exhibit "3", incorporated in and made a part hereof, and wrote and sent by U. S. mail, properly addressed and postage prepaid, a similar letter on April 27, 1965, to Honorable Robert J. Stembridge, the Representative of Houston County, Alabama, in said Legislature, a copy of which letter is attached hereto, marked Exhibit "4", incorporated in and made a part hereof, and a copy of each of said letters was duly sent by U. S. mail, postage prepaid and properly addressed, to Honorable James B. Allen, Lieutenant Governor of the State of Alabama and presiding officer of the Senate of Alabama, Mrs. Agnes Baggett, Secretary of State of the State of Alabama, and Honorable Albert P. Brewer, Speaker of the House of Representatives of the Legislature of Alabama at said time.

(2) No action was taken at said 1965 Regular Session of the Legislature of Alabama to correct the invidious and flagrant discrimination against the residents and qualified electors of said City of Dothan existing on aforesaid Board of Revenue and Control of Houston County under said Act No. 9, Exhibit "1" hereto.

XI

(1) Under the provisions of aforesaid Act No. 9 the next general election of members of said Board of Revenue and Control of Houston County, Alabama, will be held on the first Tuesday after the first Monday in November, 1966. Primary elections for the nomination of party candidates for membership on the Board of Revenue and Control of Houston County, Alabama, must be held on the first Tuesday in May, 1966 (Title 17, Section 340, Code of Alabama of 1940, as amended, and Section 2 of afore-[fol. 15] said Act No. 9). The Chairman of the County Executive Committee of each party entering such primary election shall, not less than fifty-five days prior to the date of holding such primary election, certify to the Probate Judge the names of all candidates for nomination to County offices. (Title 17, Section 344, Code of Alabama of 1940, as amended).

(2) That defendants, or their successors in office, unless prevented by this honorable Court, will perform their duties as they and their predecessors in office have heretofore performed such duties under the election laws of Alabama and pursuant to the provisions of aforesaid Act No. 9, Exhibit "1" hereto. That the rights of these plaintiffs and of all others similarly situated can be protected only by a decree of this Court declaring Section 2 of said Act No. 9 to be unconstitutional and, further, declaring the apportionment provided for therein to be unconstitutional, and by issuing a mandatory writ of injunction directing, requiring and ordering all of the defendants in their representative capacities and their successors in office, except Richmond M. Flowers, Attorney General of the State of Alabama, to hold a primary election in Houston County, Alabama, on the first Tuesday in May, 1966, if necessary for the nomination of candidates for membership on said Board of Revenue and Control of Houston County, Alabama, and to hold the general election of the members of

said Board of Revenue and Control on the first Tuesday after the first Monday in November, 1966, under the applicable election laws of the State of Alabama, to either:

(a) Nominate and elect the members of aforesaid Board of Revenue and Control at-large over Houston County, as a whole, whereby every qualified elector of said county shall have the right to vote for every member of said Board of Revenue and Control; or,

(b) Elect three members to said Board of Revenue and [fol. 16] Control from a district comprised of Beat No. 3, with approximately 7,920 qualified electors residing therein; one member from a district comprised of Beats No. 1, 2, 4, 5, 6, 7 and 14, with approximately 2,422 qualified electors residing therein; and one member from a district comprised of Beats No. 8, 9, 10, 11, 12 and 13, with approximately 2,443 qualified electors residing therein; or,

(c) That the defendants obey a decree of this Court reapportioning and redistricting Houston County, Alabama, in such a manner that the qualified electors residing in the City of Dothan, Alabama, shall elect and be represented by a sufficient number of members of the Board of Revenue and Control of said Houston County to constitute not less than 60% of the members of said Board until such time as the Legislature of the State of Alabama, by proper law, reapportions, constitutionally, the members of said Board of Revenue and Control so that the qualified electors residing in said City of Dothan will elect and be represented by a number of members of said Board of Revenue and Control in accordance with the proportion which the total population of said City of Dothan bears to the total population of said Houston County.

The Premises Considered, Plaintiffs respectfully pray that this Court take jurisdiction of this cause; and declare the rights of the plaintiffs pursuant to 58 Stat. L. 890, 28 U.S.C. Sec. 2201, in the premises, viz.:

(1) That the present apportionment of the members of the Board of Revenue and Control of Houston County, Alabama, under the provisions of aforesaid Act No. 9, Exhibit "1", hereto, has deprived and continues to deprive the plaintiffs of liberty and property without due process [fol. 17] of the law and has denied and continues to deny the plaintiffs equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States of America.

(2) That the apportionment of the members of the Board of Revenue and Control of Houston County, Alabama, as established under and by virtue of Sections 1 and 2 of aforesaid Act No. 9, Exhibit "1" hereto, and the provisions of Section 2 of said Act No. 9, dividing Houston County, Alabama, into five Board of Revenue and Control districts, specifying the Beat numbers comprising each such district and requiring that each member of said Board of Revenue and Control be nominated and elected by the voters of each of said districts and requiring that such member must be a resident of and a qualified elector in such district are void and invalid as being contrary to the continuing duty of the State of Alabama under the laws and Constitution of the United States to continue the establishment of a Republican form of government, and are contrary to the Fourteenth Amendment to the Constitution of the United States of America and contrary to the Constitution of Alabama of 1901.

(3) That the right of the plaintiffs to vote for the members of said Board of Revenue and Control of Houston County, Alabama, as guaranteed by the laws and constitution of the United States of America and by the laws and constitution of Alabama of 1901 has been impaired.

And plaintiffs further particularly pray that, after hearing this cause, the Court grant further relief in accordance with 62 Stat. L. 964, 28 U.S.C., Section 2202, as follows:

(4) Directing the defendants, Carl E. Sellers, as Judge of Probate of Houston County, Alabama, James Herring, as Sheriff of Houston County, Alabama, William G. Hause, as Chairman of the Houston County Democratic Executive Committee, and Alfred J. Saliba, Chairman of the Houston [fol. 18] County Republican Executive Committee, and their successors in office, to declare the primary election to be held on the first Tuesday in May, 1966, for the nomination of party candidates for membership on the Board of Revenue and Control of Houston County, Alabama, and the general election of such members of said Board of Revenue and Control to be held on the first Tuesday after the first Monday in November, 1966, to be on an at-large basis, and directing each of the defendants hereto, and his successor in office, to take whatever further action is necessary to insure that all candidates for nomination and election to the said Board of Revenue and Control shall run at-large throughout Houston County, Alabama, on the following basis: that the five candidates for membership on said Board of Revenue and Control receiving the highest number of votes shall be declared nominated as the respective party candidates in said primary and that the five candidates for membership on said Board of Revenue and Control receiving the highest number of votes in said general election shall be declared elected to said Board of Revenue and Control; and that said method of election shall continue until such time as the Legislature of Alabama enacts legislation reapportioning the membership of said Board of Revenue and Control in such a manner that the qualified electors residing in said City of Dothan will elect and be represented by a number of members of said Board of Control in accordance with the proportion which the population of said City of Dothan bears to the total population of said Houston County.

(5) Enjoining and restraining each of the defendants hereto, and his successor in office, from doing any act or performing any duty in his official capacity in connection

with any primary or general election which might circumvent or interfere with the decree of this Honorable Court or its orders herein, or in any way deny to plaintiffs and [fol. 19] those similarly situated their right to full and effective participation in the election of their representative members on said Board of Revenue and Control with an equally effective voice and weight as enjoyed by the qualified electors in Houston County, Alabama, residing outside of said City of Dothan.

(6) For such other and further relief as may seem just, equitable and proper.

C. R. Lewis, Attorney for Plaintiffs, P. O. Box 1165, Dothan, Alabama.

[fol. 20]

EXHIBIT 1 TO COMPLAINT

Act No. 9 S. 93—Flowers

AN ACT

To create and establish a Board of Revenue and Control for Houston County, Alabama, to be composed of five district Commissioners and the Judge of Probate who shall serve as ex officio chairman, in place of the board of revenue now existing in said County, and abolishing said board of revenue of Houston County; to provide for the four members now serving as commissioners on the board of revenue to hold office on the Board of Revenue and Control until their terms shall expire and their successors elected and qualified; to provide for compensation of the members and the manner of payments; to divide the County into five districts by adding the fifth district and prescribing the method by which this additional commissioner shall be appointed; to provide for the election of the district commissioners prescribing their required qualifications, terms of office, duties and compensation, and the numbered pre-

cincts in each district so created and established; to provide for selection of one of the commissioners to serve as vice-chairman of the board; to prescribe a quorum for the purpose of transacting business of the county; providing for appointments to fill vacancies on the board; prescribing bonds for all commissioners and the Judge of Probate as ex officio Chairman of the board; to provide for the appointment of county engineer and defining his duties, power and authority and prescribing a maximum salary for the position; to provide for powers and authority of board members and to prescribe regular meeting dates of the board; to provide procedure for the making of contracts for construction, and/or the purchase of road and bridge material, teams, tools, machinery, supplies or equipment; to provide for repeal of all laws in conflict with this act, and especially repealing certain acts designated.

Be It Enacted by the Legislature of Alabama:

Section 1. There is hereby created and established a Board of Revenue and Control for Houston County, Alabama, effective on and after the passage and approval of this bill or act and it becomes a law. The Board of Revenue and Control shall be composed of the Judge of Probate who shall serve as ex officio Chairman, but who shall have no power or authority to vote upon any questions or business before the Board in regular, special or called sessions thereof, until there shall first be a tie vote registered among the District Commissioners present and voting, and five (5) District Commissioners, four (4) of whom are presently serving as Commissioners of Districts one (1) to four (4), respectively, of the Board of Revenue, and who shall hold office and represent the respective districts assigned to them by provisions of Section 2 of this act, as District Commissioners of the Board of Revenue and Control until their successors are elected and qualified. Each of said members of the Board of Revenue and Control shall receive as compensation the sum of $1,200.00 annually, except the Judge of Probate who as ex officio Chairman shall not

receive additional compensation, and shall be paid in equal monthly installments out of the general funds of the County on warrants drawn by the Judge of Probate.

Section 2. That Houston County, Alabama, is hereby divided into five (5) Board of Revenue and Control Dis- [fol. 21] tricts, as follows: District Number 1 shall embrace and be composed of Beats Number 1, 2, and 4 and shall be represented by the incumbent Commissioner, H. A. Hollis; District Number 2 shall embrace and be composed of Beats Number 5, 6, 7, and 11 and shall be represented by the incumbent Commissioner, F. C. Jackson; District Number 3 shall embrace and be composed of Beats Number 10, 12, and 14 and shall be represented by the incumbent Commissioner, W. Harvey Hicks; District Number 4 shall embrace and be composed of Beats Number 8, 9, and 13 and shall be represented by the incumbent Commissioner, G. D. Raley; and District Number 5 shall embrace and be composed of Beat Number 3. The Governor is authorized and empowered to appoint a member of the Board of Revenue and Control, as hereby created, effective upon the bill or act becoming a law, to serve as District Commissioner of District Number 5, and who shall serve until his successor is elected at the General Election to be held on the first Tuesday after the first Monday in November, 1958, and becomes qualified, and who shall receive as compensation the sum of $1,200.00 per annum payable in the same manner and from the same funds of the County with which the other Commissioners are paid. One member of said Board of Revenue and Control hereby created shall hereafter be nominated and elected by the voters of each of the above-numbered districts, and he shall have been a resident of and a qualified elector in the District for a period of two years time immediately preceding the General Election to be held on the first Tuesday after the first Monday in November, 1958, and shall continue to reside therein during his continuance in office; and the members elected shall assume the duties of their office on the first Monday after

the second Tuesday in January, 1959, following their election, and shall hold office for a period of four (4) years and until their successors are elected and qualified. Candidates for membership on the Board of Revenue and Control for Houston County, Alabama, shall be nominated by the voters of his respective district in the Primary next preceding the General Election at which time they shall be elected by the voters of his respective district.

Section 3. That the five (5) District Commissioners hereinabove provided for shall, immediately upon assuming office as Commissioners of the Board of Revenue and Control of Houston County, Alabama, elect one from its membership as Vice-Chairman of the Board to act, in the absence of the Judge of Probate as ex officio Chairman, as presiding officer of the said Board of Revenue and Control and who shall, while acting in the official capacity of Vice-Chairman of said Board, have and exercise all of the powers and authority vested by law in the Judge of Probate as ex officio Chairman of the said Board; and the District Commissioner so elected Vice-Chairman shall serve as such until the end of his term of office and shall not receive additional compensation for this additional duty. The pres-
[fol. 22] ence of three District Commissioners, or of two District Commissioners and the District Commissioner elected to serve as Vice-Chairman of the Board shall constitute a quorum for the transaction of official business at all regular, special or called meetings held.

Section 4. That in case of a vacancy on the Board of Revenue and Control, such vacancy shall be filled by appointment made by the Governor of Alabama, and the person appointed shall hold office for the remainder of the term and until his successor has qualified.

Section 5. That each District Commissioner of the Board of Revenue and Control shall, before entering upon his official duties, be required to furnish a bond, payable to the State of Alabama in the sum of $5,000.00 for the faithful

performance of his duties; and the Judge of Probate, as ex officio Chairman of said Board shall likewise furnish a bond in the same sum, and all such bonds shall be approved by the Judge of the Circuit Court of the Twentieth Judicial Circuit of Alabama.

Section 6. That the Board of Revenue and Control shall appoint a County Engineer who shall be qualified to practice engineering and land surveying in the State of Alabama, and whose salary shall be fixed by the Board at an amount not to exceed $7,500.00 per annum payable in monthly installments; and who shall serve at the pleasure of the Board; and provided further that the County Engineer, with the approval of the Board of Revenue and Control, shall employ and fix the compensation of attorneys, all agents, assistants, supervisors, clerical workers, overseers, workmen, and laborers required for the construction, maintenance and repairs of all buildings, roads and bridges within the County, and shall, with the counsel, assistance and approval of said Board, purchase all necessary road machinery, material, teams, tools, supplies, and equipment as hereinafter provided in Section 8 used in and about the work on the County buildings, roads and bridges.

Section 7. That there is hereby conferred upon said Board of Revenue and Control of Houston County, Alabama, and the members thereof, all of the general authority, power and duties now provided, or which may hereafter be provided to Boards of Revenue or Commissioners Courts, under the general laws of the State of Alabama, and amendments thereto not inconsistent with the provisions of this Act, and for the acts of said Board equal, several and joint liability are hereby fixed for the members thereof. And in addition to the above duties and powers set out, the members of the Board of Revenue and Control shall in addition to the regular monthly meeting of the Board to be held on the second Monday of each month, they shall be required and it will be their additional duty

to hold a meeting of the Board of Revenue and Control on the fourth Monday in each month, and the District Com-
[fol. 23] missioners shall be responsible at all times for making proper inspections of roads and bridges, and other County property lying within his respective district.

Section 8. That no purchase or contract to purchase any road or bridge material, teams, tools, machinery, supplies or equipment shall be made, or any contract for the construction, maintenance or repair or any road let, either by the Board of Revenue and Control or the County Engineer, if the amount involved or the value thereof exceed $25.00 except to the lowest bidder, and where the amount of purchase or contract to be let, is in excess of $25.00 and not greater than $200.00 the Board of Revenue and Control shall have a notice posted on the bulletin board in front of the Courthouse of Houston County, Alabama five (5) days prior to the meeting at which said purchase is to be made, and if the amount of purchase to be made or contract to be let be in excess of $200.00 notice must be given that bids will received for such purchase or contract by advertising same for a period of twenty (20) days, by publication for once a week for two (2) consecutive weeks in a newspaper published in Houston County, Alabama. And, in addition to the above notice or notices, if amount be in excess of $200.00 the Chairman of said Board of Revenue and Control shall give written notice by registered mail with return receipt requested of such contemplated purchase or purchases to at least three (3) merchants or dealers in the goods or materials to be purchased, and where notice of any contract to let, to at least three (3) contractors engaged in the type of work contemplated. Such notice or notices, together with return receipts, must be recorded in and become a part of the minutes of the Board of Revenue and Control of Houston County, Alabama. Provided, however, in case of emergency, for the purchase of machinery parts, no advertisement shall be required as above stipulated. Any and all contracts made and entered

into or purchases made by the Board of Revenue and Control, except for purchases of emergency parts, in violation of terms of this section shall be null and void, and it shall be unlawful for the Probate Judge to issue warrants in payment of same. The Probate Judge must forthwith issue all warrants in payment of all lawful contracts as herein provided.

Section 9. That the compensation for the District Commissioners elected in a manner as hereinabove provided for in the General Election to be held on the first Tuesday after the first Monday in November, 1958, and who will assume the duties of their office on the first Monday after the second Tuesday in January, 1959, shall be $1,800.00 each per annum payable in equal monthly installments out of the general funds of the County on warrants drawn by the Judge of Probate. Provided, however, that the Judge of Probate, as ex officio Chairman of the Board of Revenue and Control shall not receive any additional compensation for his duties in this capacity.

[fol. 24] Section 10. That all laws, both general, special or local, and parts of laws in conflict with the provisions of this Act are hereby expressly repealed, and especially repealing House Local Bill No. 378, approved July 23, 1931, by the Governor of Alabama, and House Local Bill No. 533, approved June 27, 1935, by the Governor of Alabama, and House Local Bill No. 1013, approved September 13, 1935, by the Governor of Alabama, and House Local Bill No. 1014, approved September 13, 1935, by the Governor of Alabama, and Senate Local Bill No. 294 set out on pages 133, 134, 135, and 136 in Local Acts of Alabama in the year 1939, and which became a law under Section 125 of the Constitution; and House Local Bill No. 599, pages 931, 932, 933 and 934, General and Local Acts of Alabama 1949, approved September 19, 1949 by the Governor of Alabama.

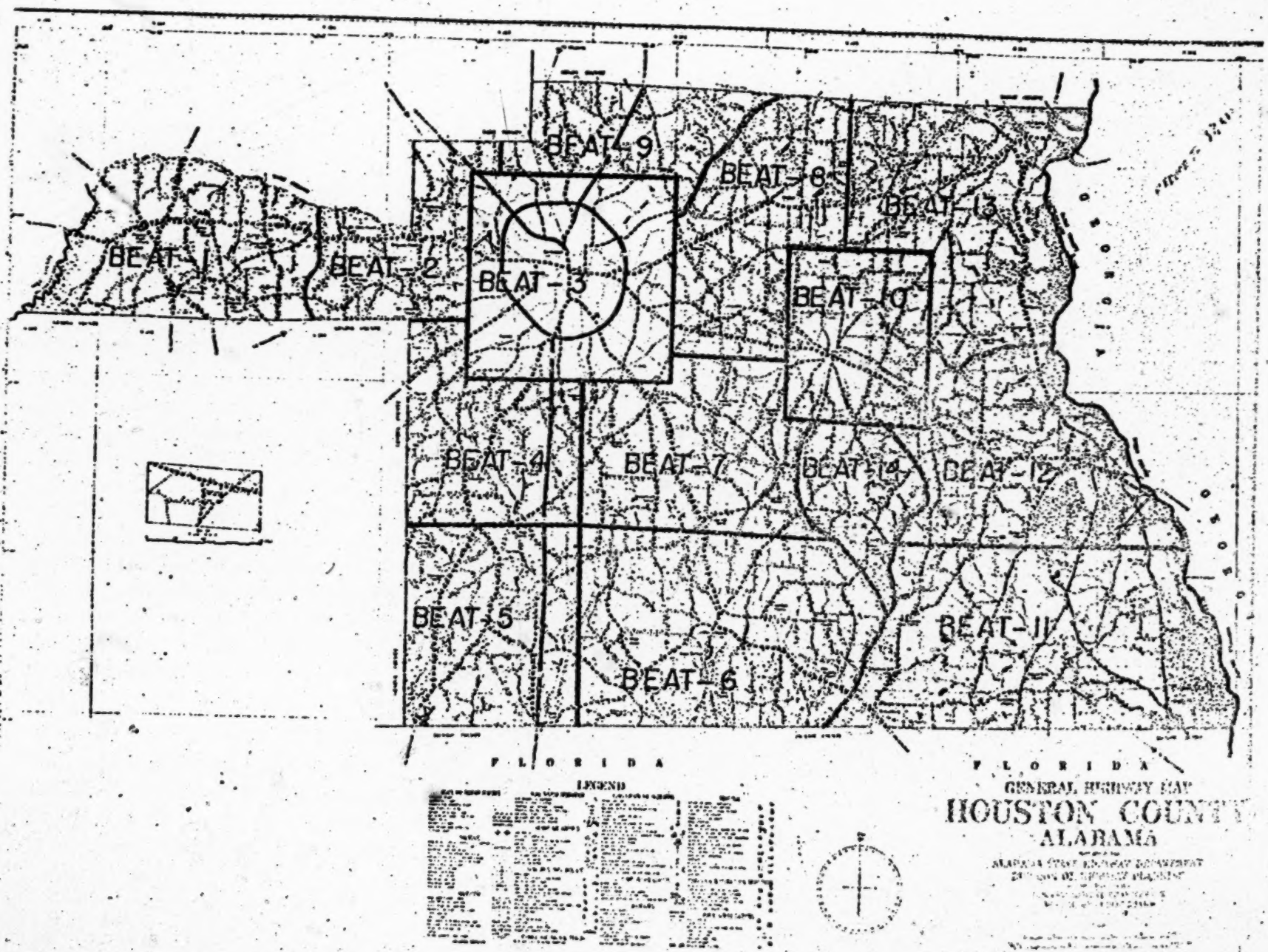
Section 11. That if any section, provision, clause or portion of this Act shall be declared, by court of competent

jurisdiction, to be invalid or unconstitutional, same shall not be held to affect any other section, provision, clause or portion of this Act, but same shall remain in full force and effect.

Section 12. That this Act shall become effective immediately upon its passage and approval by the Governor, or upon its otherwise becoming a law.

Approved May 24, 1957.

Time: 11:12 A. M.


BEAT-1
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BEAT-12
BEAT-13
BEAT-14
FLORIDA
FLORIDA
LEGEND
GENERAL HIGHWAY MAP
HOUSTON COUNTY
ALABAMA

[fol. 26] EXHIBIT 3 TO COMPLAINT

(Letterhead of The City of Dothan, Dothan, Alabama)

April 27, 1965

Honorable Charles H. Adams
Member of Senate
Legislature of Alabama
Dothan, Alabama

Dear Mr. Adams:

This letter is being written to you in your capacity as Senator of Houston County, Alabama, in the Legislature of Alabama.

As you know, the Board of Revenue and Control, the governing body of Houston County, Alabama, was created by Act No. 9, Acts of the Legislature of Alabama, Regular Session of 1957, Vol. I, page 30 et seq., which provides that said Board shall be composed of five district Commissioners and the Judge of Probate, who shall serve as ex officio chairman with the right to vote only in case of a tie vote by the District Commissioners present and voting. Under the provisions of said Act, Houston County is divided into five Board of Revenue and Control Districts, as follows: District Number 1 is composed of Beats Number 1, 2 and 4; District Number 2 is composed of Beats Number 5, 6, 7 and 11; District Number 3 is composed of Beats Number 10, 12 and 14; District Number 4 is composed of Beats Number 8, 9 and 13; and District Number 5 is composed of Beat Number 3—said Beat Number 3 having the same boundaries as the corporate limits of the City of Dothan, Alabama.

While we do not have at hand the total population of each of the above-numbered Beats, we give you the following information: The official 1960 census of the United States shows the population of Houston County to be 50,718 and

the population of the City of Dothan to be 31,440, and the population of the City of Dothan is estimated at 36,753 in the 1965 edition of Editor and Publisher Market Guide; the 1964 list of qualified voters compiled by the Judge of Probate of Houston County, Alabama, shows the number of qualified voters in aforesaid districts to be as follows: District Number 1—1,098; District Number 2—1,357; District Number 3—1,232; District Number 4—1,168; and District Number 5, comprised of the City of Dothan—7,920; [fol. 27] total assessed value of property in Houston County assessed for ad valorem taxes in 1965 amounted to $30,621,030.00—$21,217,120.00 of which represented property located in the City of Dothan.

The above facts show that the population of the City of Dothan constitutes over 61% of the total population of Houston County, based on the official 1960 census of the United States, and a much higher percentage if the estimate in the 1965 edition of Editor and Publisher Market Guide is used; that the qualified voters in the City of Dothan comprise over 61% of the total number of qualified voters in Houston County; that the assessed value of property assessed for ad valorem taxes in the City of Dothan for 1965 amounts to over 69% of the total assessed value of property assessed for ad valorem taxes in Houston County; that, notwithstanding the foregoing facts, the qualified voters of the City of Dothan have only one Commissioner on aforesaid Board of Revenue and Control—only a 20% voice in actions taken by said Board under its governmental powers and in the determination of how and for what the tax money and other money received by Houston County shall be spent.

As you probably know, the Supreme Court of The United States decided on June 15, 1964, in the case of *Reynolds* v. *Sims*, 84 S. Ct. 1362, 12L Ed. 2d 506, that the basic principle of representative government is that the weight of a citi-

zen's vote cannot be made to depend on where he lives. Furthermore, that an individual's right to vote is "unconstitutionally impaired when its weight is in a substantial fashion diluted when compared with votes of citizens living in other parts of the state." The Supreme Court of the United States has, in a series of cases beginning with its 1961 decision in the case of *Baker* v. *Carr*, 82 S. Ct. 671, 7 L. Ed. 2d 663, made it clear that the equal protection clause of the Fourteenth Amendment to the United States Constitution requires that all electors voting for members of a representative body must have a vote of substantially equal magnitude to the vote of every other elector voting for a member of that body. This "one man, one vote" principle has been followed by the highest courts in many of the states and was specifically held by the Supreme Court of Wisconsin to apply to a county governing body. (See *Sonneborn et al.* v. *Sylvester* (1964) 25 Wis. 2d 177, 130 N. W. 2d 569; also see *Brouwer* v. *Bronkema*, (1964) Michigan).

The undersigned is writing you as Mayor of the City of Dothan and as an individual taxpayer and a qualified voter residing in said City to request and urge that you introduce in the forthcoming Regular Session of the Legislature of Alabama to convene in May, 1965, and secure the passage [fol. 28] of an Act which will provide for the fair and equal representation of the qualified voters residing in aforesaid District 5, when compared with the number of qualified voters residing in aforesaid Districts No. 1, 2, 3 and 4. I feel that this is the proper and democratic way to correct the inequitable and intolerable malapportionment now existing on aforesaid Board of Revenue and Control. However, if no such Act is passed during the forth-coming Regular Session of the Legislature of Ala-

bama, I will have no other recourse but to seek judicial relief.

Your early reply in the premises is requested.

Respectfully yours,

/s/ EARLE C. MOODY
Earle C. Moody, Mayor
of the City of Dothan, Alabama

cc: Hon. James B. Allen
Lieutenant Governor
State of Alabama

Mrs. Agnes Baggett
Secretary of State
State of Alabama

Hon. Albert P. Brewer, Speaker
House of Representatives
Legislature of Alabama

[fol. 29] EXHIBIT 4 TO COMPLAINT

(Letterhead of The City of Dothan, Dothan, Alabama)

April 27, 1965

Honorable Robert J. Stembridge
Member, House of Representatives
Legislature of Alabama
Dothan, Alabama

Dear Mr. Stembridge:

This letter is being written to you in your capacity as Representative of Houston County, Alabama, in the Legislature of Alabama.

As you know, the Board of Revenue and Control, the governing body of Houston County, Alabama, was created by Act No. 9, Acts of the Legislature of Alabama, Regular Session of 1957, Vol. I, page 30 et seq., which provides that said Board shall be composed of five district Commissioners and the Judge of Probate, who shall serve as ex officio chairman with the right to vote only in case of a tie vote by the District Commissioners present and voting. Under the provisions of said Act, Houston County is divided into five Board of Revenue and Control Districts, as follows: District Number 1 is composed of Beats Number 1, 2 and 4; District Number 2 is composed of Beats Number 5, 6, 7 and 11; District Number 3 is composed of Beats Number 10, 12 and 14; District Number 4 is composed of Beats Number 8, 9 and 13; and District Number 5 is composed of Beat Number 3—said Beat Number 3 having the same boundaries as the corporate limits of the City of Dothan, Alabama.

While we do not have at hand the total population of each of the above-numbered Beats, we give you the following information: The official 1960 census of the United States

shows the population of Houston County to be 50,718 and the population of the City of Dothan to be 31,440, and the population of the City of Dothan is estimated at 36,753 in the 1965 edition of Editor and Publisher Market Guide; the 1964 list of qualified voters compiled by the Judge of Probate of Houston County, Alabama, shows the number of qualified voters in aforesaid districts to be as follows: District Number 1—1,098; District Number 2—1,357; District Number 3—1,232; District Number 4—1,168; and District Number 5, comprised of the City of Dothan—7,920; total assessed value of property in Houston County assessed for ad valorem taxes in 1965 amounted to $30,621,030.00—$21,217,120.00 of which represented property [fol. 30] located in the City of Dothan. The above facts show that the population of the City of Dothan constitutes over 61% of the total population of Houston County, based on the official 1960 census of the United States, and a much higher percentage if the estimate in the 1965 edition of Editor and Publisher Market Guide is used; that the qualified voters in the City of Dothan comprise over 61% of the total number of qualified voters in Houston County; that the assessed value of property assessed for ad valorem taxes in the City of Dothan for 1965 amounts to over 69% of the total assessed value of property assessed for ad valorem taxes in Houston County; that, notwithstanding the foregoing facts, the qualified voters of the City of Dothan have only one Commissioner on aforesaid Board of Revenue and Control—only a 20% voice in actions taken by said Board under its governmental powers and in the determination of how and for what the tax money and other money received by Houston County shall be spent.

As you probably know, the Supreme Court of the United States decided on June 15, 1964, in the case of *Reynolds* v. *Sims*, 84 S. Ct. 1362, 12 L. Ed. 2d 506, that the basic principle of representative government is that the weight of a citizen's vote cannot be made to depend on where he lives. Furthermore, that an individual's right to vote is "uncon-

stitutionally impaired when its weight is in a substantial fashion diluted when compared with votes of citizens living in other parts of the state." The Supreme Court of the United States has, in a series of cases beginning with its 1961 decision in the case of *Baker* v. *Carr*, 82 S. Ct. 671, 7 L. Ed. 2d 663, made it clear that the equal protection clause of the Fourteenth Amendment to the United States Constitution requires that all electors voting for members of a representative body must have a vote of substantially equal magnitude to the vote of every other elector voting for a member of that body. This "one man, one vote" principle has been followed by the highest courts in many of the states and was specifically held by the Supreme Court of Wisconsin to apply to a county governing body. (See *Sonneborn et al.* v. *Sylvester* (1964) 25 Wis. 2d 177, 130 N. W. 2d 569; see also *Brouwer* v. *Bronkema*, (1964) Michigan).

The undersigned is writing you as Mayor of the City of Dothan and as an individual taxpayer and qualified voter residing in said City to request and urge that you introduce in the forthcoming Regular Session of the Legislature of Alabama to convene in May, 1965, and secure the passage of an Act which will provide for the fair and equal representation of the qualified voters residing in aforesaid District 5, when compared with the number of qualified voters residing in aforesaid Districts No. 1, 2, 3 and 4. I feel that this is the proper and democratic way to correct the inequitable and intolerable malapportionment now existing on aforesaid Board of Revenue and Control. However, [fol. 31] if no such Act is passed during the forthcoming

Regular Session of the Legislature of Alabama, I will have no other recourse but to seek judicial relief.

Your early reply in the premises is requested.

Respectfully yours,

/s/ Earle C. Moody
Earle C. Moody, Mayor
City of Dothan, Alabama

ECM:pd

cc: Honorable James B. Allen
Lieutenant Governor
State of Alabama

Mrs. Agnes Baggett
Secretary of State
State of Alabama

Honorable Albert P. Brewer
Speaker, House of Representatives
Legislature of Alabama

[fol. 32]

In the United States District Court

Middle District of Alabama

Civil Action No. 860-S

[Title omitted]

Order Designating Three-Judge Court—December 28, 1965

The Honorable Frank M. Johnson, Jr., United States District Judge for the Middle District of Alabama, to whom an application for injunction and other relief has been presented in the above styled and numbered cause,

[File endorsement omitted]

having notified me that the action is one required by act of Congress to be heard and determined by a district court of three judges, I, Elbert P. Tuttle, Chief Judge of the Fifth Circuit, hereby designate Honorable Walter P. Gewin, United States Circuit Judge, and Honorable Sey- [fol. 33] bourn H. Lynne, United States District Judge for the Northern District of Alabama, to serve with Judge Johnson as members of, and with him to constitute the said court to hear and determine the action.

Witness my hand this 28th day of December, 1965.

Elbert P. Tuttle, Chief Judge, Fifth Circuit.

[fol. 34]

UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF ALABAMA

[Title omitted]

ANSWER OF DEFENDANT, ROY MAYHALL—
Filed January 10, 1966

Comes the defendant, Roy Mayhall, as Chairman of the State Democratic Executive Committee of Alabama, and for answer to the complaint in the above styled case states and says:

The defendant neither admits or denies the allegations of said complainant and said defendant as Chairman of the State Democratic Executive Committee of Alabama stands ready to abide by and to fully comply with such orders and decrees as may be rendered by the court in this case.

Roy Mayhall, Chairman of State Democratic Executive Committee of Alabama, Defendant.

[File endorsement omitted]

Certificate of Service (omitted in printing).

[fol. 35]

UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF ALABAMA

SOUTHERN DIVISION

[Title omitted]

MOTION OF ATTORNEY GENERAL TO DISMISS—Filed January 13, 1966

The defendant moves the Court as follows:

1. To dismiss the action because the complaint fails to state a claim against the defendant upon which relief can be granted.

2. To dismiss the action as the entire complaint is based upon the number of registered voters within each beat or district rather than total population of each beat or district.

3. To dismiss the action because the total population of each beat or of each district is not alleged.

4. To dismiss the action because the complaint fails to allege a substantial federal question.

5. To dismiss the action because the complaint affirmatively shows that there is no disparity among the population within the geographical unit.

6. To dismiss the action because for want of disparity within the geographical unit this Court is without jurisdiction in this cause.

Respectfully submitted,

Richmond M. Flowers, Attorney General; Gordon Madison, Assistant Attorney General; Walter S. Turner, Assistant Attorney General, Attorneys for Defendant Richmond M. Flowers.

[File endorsement omitted]

[fol. 36] Certificate of Service (omitted in printing).

[fol. 37]

UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF ALABAMA

SOUTHERN DIVISION

[Title omitted]

MOTION OF WILLIAM G. HAUSE TO DISMISS—Filed January 14, 1966

The defendant William G. Hause, Chairman of the Houston County Democratic Executive Committee, moves the Court as follows:

1. To dismiss the action because the complaint fails to state a claim against the defendant upon which relief can be granted.

2. To dismiss the action as the entire complaint is based upon the number of registered voters within each beat or district rather than total population of each beat or district.

3. To dismiss the action because the total population of each beat or of each district is not alleged.

4. To dismiss the action because the complaint fails to allege a substantial federal question.

5. To dismiss the action because the complaint affirmatively shows that there is no disparity among the population within the geographical unit.

6. To dismiss the action because for want of disparity within the geographical unit this Court is without jurisdiction in this cause.

7. To dismiss the action because it does not appear that plaintiffs have exhausted their remedies in the courts of the State of Alabama.

[File endorsement omitted]

8. To dismiss the action because it does not appear that plaintiffs have exhausted their remedies available to them under the laws of the State of Alabama.

9. To dismiss the action because it does not appear that [fol. 38] plaintiffs have exhausted their legislative remedies available to them in the Legislature of the State of Alabama.

William G. Hause, Chairman of the Houston County Democratic Executive Committee, Pro se.

Certificate of Service (omitted in printing).

[fol. 39]

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION

[Title omitted]

MOTION OF CARL E. SELLERS, ET AL. TO DISMISS—
Filed January 14, 1966

The defendants Carl E. Sellers, Judge of Probate of Houston County, Alabama; James Herring, Sheriff of Houston County, Alabama; W. G. Bond, J. W. Calhoun, W. H. Hicks, W. E. Yance, and J. B. Davis, as members of the Board of Revenue and Control of Houston County, Alabama; separately and severally, move the Court as follows:

1. To dismiss the action because the complaint fails to state a claim against the defendant upon which relief can be granted.

[File endorsement omitted]

2. To dismiss the action as the entire complaint is based upon the number of registered voters within each beat or district rather than total population of each beat or district.

3. To dismiss the action because the total population of each beat or of each district is not alleged.

4. To dismiss the action because the complaint fails to allege a substantial federal question.

5. To dismiss the action because the complaint affirmatively shows that there is no disparity among the population within the geographical unit.

6. To dismiss the action because for want of disparity within the geographical unit this Court is without jurisdiction in this cause.

7. To dismiss the action because it does not appear that plaintiffs have exhausted their remedies in the courts of the State of Alabama.

[fol. 40] 8. To dismiss the action because it does not appear that plaintiffs have exhausted their remedies available to them under the laws of the State of Alabama.

9. To dismiss the action because it does not appear that plaintiffs have exhausted their legislative remedies available to them in the Legislature of the State of Alabama.

John C. Godbold for Godbold, Hobbs & Copeland, Box 347, Montgomery, Alabama;

W. G. Hardwick, Penney Building, Dothan, Alabama;

Jere C. Segrest, County Attorney for Houston County, Alabama, Penney Building, Dothan, Alabama.

Attorneys for Aforesaid Defendants.

Certificate of Service (omitted in printing).

[fol. 41]

UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF ALABAMA

SOUTHERN DIVISION

[Title omitted]

MOTION TO STRIKE NAME OF J. B. DAVIS FROM MOTION TO DISMISS, ETC.—Filed January 19, 1966

The undersigned move the Court for leave to strike from the Motion to Dismiss filed by them in this cause in the name of defendant J. B. Davis, as member of the Board of Revenue and Control of Houston County, Alabama, and to withdraw the appearance heretofore made by them in this cause for said defendant, and to withdraw their appearance as attorneys in this cause for said defendant.

Such appearance was entered with the understanding that the same was authorized by said defendant, but he has now requested that the same be withdrawn.

John C. Godbold for Godbold, Hobbs & Copeland, Box 347, Montgomery, Alabama;

W. G. Hardwick, Penney Building, Dothan, Alabama;

Jere C. Segrest, County Attorney for Houston County, Alabama, Penney Building, Dothan, Alabama.

[File endorsement omitted]

Certificate of Service (omitted in printing).

[fol. 42]

UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF ALABAMA

Civil Action, No. 860-S

[Title omitted]

ANSWER OF THOMAS H. BRIGHAM—Filed January 21, 1966

Thomas H. Brigham, Chairman of the Alabama State Republican Executive Committee, a defendant in the above styled cause, herewith files the following answer:

First

The complaint fails to state a claim against this defendant upon which relief can be granted.

Second

Correction of the harm alleged by plaintiffs does not require the holding of a primary election, and any relief to which plaintiffs may be entitled can be achieved through appropriate order directed to the conduct of a county mass meeting of Republicans or of a county delegated convention of Republicans. By section 190 of the Alabama Constitution and by section 336 of title 17 of the Code of Alabama it is provided that primary elections shall not be compulsory upon any party; and Article 2 of Chapter 2 of Title 17 of the Code of Alabama prescribes the manner by which political parties may select candidates by means of county mass meetings or county delegated conventions. No order of this court should be entered which would deprive the State Republican Executive Committee of Alabama from making its own decision, as permitted by the laws of this State, whether or not candidates in Houston County are to

[File endorsement omitted]

be selected by the primary election method or by some other method.

Sam C. Pointer, Jr., 807 Massey Building, Birmingham, Alabama 35203, Attorney for Thomas H. Brigham.

Certificate of Service (omitted in printing).

[fol. 43]

UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF ALABAMA

SOUTHERN DIVISION

[Title omitted]

ORDER GRANTING MOTION TO STRIKE, ETC.—
January 21, 1966

This cause is now submitted upon the motion filed herein on January 19, 1966, by Attorneys John C. Godbold for Godbold, Hobbs & Copeland, W. G. Hardwick, and Jere C. Segrest, wherein said attorneys seek to have this Court strike from the Motion to Dismiss filed by them in this cause the name of the defendant J. B. Davis, as member of the Board of Revenue and Control of Houston County, Alabama, and to withdraw the appearance heretofore made by them in this cause for said defendant, and to withdraw their appearance as attorneys in this cause for said defendant.

Upon consideration of said motion and for good cause, it is the Order, Judgment and Decree of this Court that said motion should be and the same is hereby granted.

Done, this the 21st day of January, 1966.

Frank M. Johnson, Jr., United States District Judge.

[File endorsement omitted]

[fol. 44]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION

[Title omitted]

ORDER REFILING OF BRIEFS—February 9, 1966

It is Ordered that all parties in this cause file on or before February 23, 1966, with the Clerk of this Court, and with the individual judges designated by the Chief Judge of this Circuit to constitute the court to hear and determine this matter, their briefs in support of and in opposition to the several motions to dismiss heretofore filed in this cause.

Done, this the 9th day of February, 1966.

Frank M. Johnson, Jr., United States District Judge.

[File endorsement omitted]

[fol. 45]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA

Civil Action No. 693-E

JOHN B. STEVENSON, et al., Plaintiffs,

vs.

RICHMOND M. FLOWERS, et al., Defendants.

Civil Action No. 860-S

EARLE C. MOODY, et al., Plaintiffs,

vs.

RICHMOND M. FLOWERS, et al., Defendants.

ORDER CONSOLIDATING CASES—March 23, 1966

It appears that the above-captioned actions involve common questions of law and, for that reason, consolidation, pursuant to Rule 42(a), Federal Rules of Civil Procedure, will tend to avoid unnecessary costs or delay. It is, therefore, Ordered that the above-captioned actions be and they are hereby consolidated pursuant to Rule 42(a), Federal Rules of Civil Procedure.

It is further Ordered that these cases be and they are hereby set for a hearing on all pending motions and on the merits, said hearing to be conducted in the United States District Courtroom at Montgomery, Alabama, commencing at 10 a.m., Friday, April 8, 1966.

Done, this the 23rd day of March, 1966.

Frank M. Johnson, Jr., United States District Judge.

[fol. 46]

UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF ALABAMA

Civil Action, No. 860-S

[Title omitted]

ANSWER OF ALFRED J. SALIBA—Filed March 30, 1966

Alfred J. Saliba, Chairman of the Houston County Republican Executive Committee, a defendant in the above styled cause, herewith files the following answer:

First

Correction of the harm alleged by plaintiffs does not require the holding of a primary election, and any relief to which plaintiffs may be entitled can be achieved through appropriate order directed to the conduct of a county mass meeting of Republicans or of a county delegated convention of Republicans. By section 190 of the Alabama Constitution and by section 336 of title 17 of the Code of Alabama it is provided that primary elections shall not be compulsory upon any party; and Article 2 of Chapter 2 of Title 17 of the Code of Alabama prescribes the manner by which political parties may select candidates by means of county mass meetings or county delegated conventions. No order of this court should be entered which would deprive the appropriate State Republican Executive Committee from making its own decision, as permitted by the laws of this State, whether or not candidates in Houston County are to be selected by the primary election method or by some other method. This defendant does not otherwise oppose or contest the relief sought by plaintiffs.

Sam C. Pointer, Jr., 807 Massey Building, Birmingham, Alabama 35203, Attorney for Alfred J. Saliba.

[File endorsement omitted]

Certificate of Service (omitted in printing).

[fol. 47]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION

[Title omitted]

ANSWER OF DEFENDANT RICHMOND M. FLOWERS
—Filed March 30, 1966

First Defense

The constitutional principles decided in *Baker* v. *Carr* have no application to the facts alleged in the complaint.

Second Defense

There is no serious wrong and lack of political remedy shown as the result of the passage of the act complained of in the complaint, therefore this Court should not entertain this suit.

Third Defense

Political subdivisions of states never were and never have been considered as sovereign entities, but agencies of the state, and as such are not so similar to states that the one man—one vote rule for states must be applied to them.

Fourth Defense

So long as the people of a state are afforded equal protection by equality of representation in the state legisla-
[fol. 48] ture, the courts may not interfere with local governmental agencies of limited power which have been created by the legislature and have no power to reapportion themselves.

[File endorsement omitted]

Fifth Defense

Federal Courts may not interfere with local government where the people of the political subdivision have an adequate remedy at the polls.

Sixth Defense

Even if there is some disparity in population in districts within a political subdivision, the federal courts may not interfere with apportionment unless there is shown to be "invidious discrimination."

Seventh Defense

The courts may not intervene because there is rational justification for the districting set forth in the complaint.

Eighth Defense

If the court has power to intervene it should not do so until it is clearly established as law, and made known to state legislatures, that *Baker* v. *Carr* requires them to act affirmatively to reapportion local government agencies, and the Alabama legislature then has declined to do so.

Ninth Defense

Validity of apportionment must be tested on the basis of population. No population figures of the various voting districts involved have been alleged. The only population data alleged is that of the City and the rest of the County.

[fol. 49] Richmond M. Flowers, As Attorney General of Alabama; Gordon Madison, As Assistant Attorney General of Alabama; Attorneys for defendant, Richmond M. Flowers.

Certificate of Service (omitted in printing).

[fol. 50]

IN THE UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF ALABAMA

SOUTHERN DIVISION

[Title omitted]

ANSWER OF CARL E. SELLERS, et al.—Filed April 4, 1966

This answer is filed on behalf of Carl E. Sellers, Judge of Probate of Houston County, Alabama; James Herring, Sheriff of Houston County, Alabama; W. G. Bond, J. W. Calhoun, W. H. Hicks and W. E. Yance, as members of the Board of Revenue and Control of Houston County, Alabama; and William G. Hause, as Chairman of the Houston County Democratic Executive Committee.

First Defense

A. These defendants admit that this Court has jurisdiction of the parties as alleged in paragraph I. They deny that the Court has jurisdiction or power to grant the relief sought.

B. They admit the allegations of the first paragraph of paragraph II. They deny the allegations of the second paragraph of paragraph II.

C. They admit the allegations of paragraph III insofar as they relate to the residence, offices, capacities and duties of these defendants and of defendant J. B. Davis. They admit that this action involves the constitutionality of Act No. 9 of the 1957 Regular Session of the Legislature and the constitutionality of the appointment of the Board of Revenue and Control under said Act.

D. They deny the allegations of paragraph IV.

[File endorsement omitted]

E. They admit the provision of Section I of the Fourteenth Amendment is as stated in paragraph V but deny the provision has the effect claimed in said paragraph by plaintiffs.

F. They admit that the constitutional provisions set out [fol. 51] in paragraph VI are correctly stated.

G. They admit that Act No. 9 was passed as alleged and that the copy of the Act attached to the complaint is a true copy.

H. They admit that the lists prepared by the Judge of Probate of Houston County, Alabama in 1960 and 1964 showed the number of qualified electors set out in sub-paragraphs (1) and (2) of paragraph VIII.

They admit the allegations of sub-paragraphs (3) and (4) of paragraph VIII. For lack of knowledge they neither admit nor deny the allegations of sub-paragraph (5) of paragraph VIII. They deny the allegations of sub-paragraph (6) of paragraph VIII.

I. They admit that the Board of Revenue and Control has the powers enumerated in paragraph IX although certain of them are limited by other provisions of law. They deny that the Board has broad governing powers and allege that in fact its duties are primarily administrative and supervisory, that its legislative powers are nominal, and that it is not a general purpose government.

J. For lack of knowledge, they neither admit nor deny the allegations of sub-paragraph (1) of paragraph X. As to sub-paragraph (2) of paragraph X, they deny there is any invidious and flagrant discrimination, and they have no knowledge as to what action was or was not taken or attempted to be taken at the 1965 Regular Session.

K. They admit the allegations of sub-paragraph (1) of paragraph XI. They admit the allegations of the first sentence of sub-paragraph (2) and deny all other allegations of sub-paragraph (2).

L. For further defense, these defendants say that the people of Alabama, including plaintiffs and their class, are afforded equal protection by equality of representation in the State Legislature where legislators are elected on sub-
[fol. 52] stantially a one-man one-vote basis, and in such situation the Courts have no jurisdiction or power to interfere with local governmental agencies which have no power to reapportion themselves.

Second Defense

These defendants incorporate herein paragraphs A through L of the First Defense.

M. The governmental agency here involved is a local agency. It has limited power, and little of that legislative. Primarily it is an administrative and supervisory body. It has not flagrantly refused to reapportion itself, in fact has no power to reapportion. There has been no flagrant violation of duty by the Legislature (which has the power to redistrict the County) for as yet there has been no definitive mandate that such a duty exists for entities below the level of the State itself. No arbitrary use of power by rural Board members or mistreatment of urban voters is claimed. In the situation here presented the Courts have no jurisdiction or power to reapportion. If they have such power it should not be exercised.

Third Defense

These defendants incorporate herein paragraphs A through M of the Second Defense.

N. The plaintiffs and their class are a majority of the voters of Houston County and have the democratic remedy of the ballot box freely available to them without bar or "stranglehold." Legislative representatives of Houston County will be chosen by plaintiffs and the class they represent and other qualified electors of the County, in the

Democratic primary on May 3, 1966 and in the general election in November, 1966, on a county-wide basis without regard to the districting to which plaintiffs here object. Plaintiffs and their class have a political remedy available, if they wish to exercise it, to select candidates committed to the type redistricting plaintiffs desire and to reject candidates opposed thereto. In the situation here presented the courts have no jurisdiction or power to reapportion. If [fol. 53] they have such power it should not be exercised.

Fourth Defense

These defendants incorporate herein paragraphs A through N of the Third Defense.

O. While disparity in population is alleged, no "invidious discrimination" is shown. No arbitrary use of power by rural Board members or mistreatment of urban voters is claimed. No iniquitous "stranglehold" is shown; in fact plaintiffs and their class have complete political remedy if they will exercise it. There is rational justification for the present districting of Houston County. In the situation here presented the courts have no jurisdiction or power to reapportion. If they have such power it should not be exercised.

Fifth Defense

These defendants incorporate herein paragraphs A through O of the Fourth Defense.

P. Validity of apportionment must be tested on the basis of population. No population figures are alleged for the various voting districts involved nor for those prayed to be created. Population data is alleged only for the City of Dothan on the one hand and the rest of the County on the other. The voting districts sought to be created are on the basis of qualified electors therein in 1964, which is not the proper basis for redistricting. In the situation here presented the courts have no jurisdiction or power to re-

apportion. If they have such power it should not be exercised.

Sixth Defense

These defendants incorporate herein paragraphs A through P of the Fifth Defense.

Q. If the Court has power to act it should not do so until it is clearly established as law and made known to state legislatures that *Baker* vs. *Carr* requires them to act affirmatively to reapportion local governmental agencies, and the Alabama legislature then has declined to do so.

[fol. 54] Seventh Defense

These defendants incorporate herein paragraphs A through Q of the Sixth Defense.

R. The relief sought by plaintiffs will upset the orderly conduct of elections, the machinery of which already is in progress. In the situation here presented the courts have no jurisdiction or power to reapportion. If they have such power it should not be exercised.

John C. Godbold, for Godbold, Hobbs & Copeland, Box 347, Montgomery, Alabama;

W. G. Hardwick, Penney Building, Dothan, Alabama;

Jere C. Segrest, County Attorney for Houston County, Alabama, Penney Building, Dothan, Alabama, Attorneys for aforesaid defendants (other than William G. Hause);

William G. Hause, as Chairman of the Houston County Democratic Executive Committee, pro se.

Certificate of Service (omitted in printing).

[fol. 55]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION

[Title omitted]

MOTION OF PLAINTIFFS FOR JUDGMENT ON PLEADINGS—
Filed April 8, 1966

Come now the plaintiffs, by their attorney, and move the Court for a judgment on the pleadings against each of the defendants, separately and severally, for the following separate and several reasons:

(1) The answer of said defendant admits the averments contained in the complaint.

(2) The matters and things alleged in the answer of said defendant constitute an admission of the averments contained in the complaint.

(3) The matters and things alleged in the answer of said defendant constitute an admission of the averments contained in the complaint because said answer fails to comply with the requirements of Rule 8 (b) of the Federal Rules of Civil Procedure.

(4) The averments contained in each defense filed by said defendant are legally insufficient to constitute a legal defense to this action.

(5) The averments contained in each defense filed by said defendant constitute a conclusion of law and are legally insufficient as a valid defense of this action.

(6) The averments contained in each defense filed by said defendant constitute an erroneous conclusion of law

[File endorsement omitted]

[fol. 56] and are legally insufficient as a valid defense to this action.

C. R. Lewis, P. O. Box 1165, Dothan, Alabama, Attorney for Plaintiffs.

Certificate of Service (omitted in printing).

[fol. 57]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA

Civil Action No. 860

(Southern Division)

EARL C. MOODY, et al., Plaintiffs,

vs.

RICHMOND M. FLOWERS, et al., Defendants.

Civil Action No. 693

(Eastern Division)

JOHN B. STEVENSON, et al., Plaintiffs,

vs.

RICHMOND M. FLOWERS, et al., Defendants.

OPINION—June 14, 1966

Before Gewin, Circuit Judge, and Lynne and Johnson, District Judges.

LYNNE, District Judge.

Consolidated for purpose of trial, these actions involve common questions of law and fact. Positing jurisdiction upon the provisions of 42 U.S.C.A. §§ 1983 and 1988 and 28 U.S.C.A. § 1343(3) each complaint seeks judicial intervention in the internal political affairs of a county.

No. 860-S (Houston County, Alabama)

The relevant facts may be severely capsulated. Houston County is divided into fourteen election precincts, commonly referred to as "Beats." Its Board of Revenue and Control (Board) consists of five members, each elected by the qualified electors of the district of which he is a resident. In tabular form the five districts are described as follows:

[fol. 58] District No. 1, comprising Beats 1, 2 and 4, contains 1,224 electors;

District No. 2, comprising Beats 5, 6, 7 and 11, contains 1,722 electors;

District No. 3, comprising Beats 10, 12 and 14, contains 1,450 electors;

District No. 4, comprising Beats 8, 9, and 13 contains 1,368 electors;

District No. 5, comprising Beat 3 (the City of Dothan), contains 9,046 electors.

According to the 1960 census the total population of Houston County was 50,718 and that of the City of Dothan was 31,440, or about 61% of the total. While an exact head count is not available, it may be inferred that the population of Districts 1, 2, 3 and 4 approximates the ratio of its qualified electors to the total population of the county, less that of the City of Dothan, as compared with the ratio of qualified electors within such city to its known population.

The above-described division of the county into districts and apportionment of membership of the Board resulted from the enactment of Act No. 9 of the 1957 Regular Session of the Legislature of Alabama (Acts of Alabama, Reg. Sess. 1957, No. 9, p. 30), effective May 24, 1957. Its constitutionality when tested by the equal protection clause of the fourteenth amendment is attacked by plaintiffs.

From official records it appears that the total assessed value of property within the county for ad valorem tax purposes is $30,621,030, of which amount property within the City of Dothan accounts for $21,217,120. There being no substantial evidence of hostile treatment of the City of Dothan by the Board, the facts suggest but one arguable contention of proscribed discrimination. Sixty-one per cent of the population of the county, owning 69% of the assessed value of the property therein, are represented by only one [fol. 59] of five Board members and therefore have only a 20% voice in the levying of taxes and the expenditure of monies collected therefrom by the county.[1]

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[1] An Alabama county has no inherent power to tax. It can impose only such tax, on such subject, under such circumstances, and within such rate as the state authorizes.

The ad valorem tax on property, available for payment of general county expenses, is prescribed by section 215 of the Alabama constitution, and the maximum rate is there set. Ala. Code, tit. 51, § 71 (1940) (Recomp. 1958) directs the board to levy this tax and for what purposes and on what property valuations. The language is mandatory and the levy is part of a detailed statutory scheme for valuation assessments, appeals therefrom, and assessment of escapes. Failure of the board to levy could be the subject of mandamus. Slaughter v. Mobile County, 73 Ala. 134 (1882).

With respect to the levying of special taxes, the power of the board is severely limited by the Alabama constitution. Thus, amendment 208 provides that no county in Alabama is authorized to levy a greater rate of taxation in any one year on the value of the taxable property therein than one-half of one per centum, except that for debt created for the erection of necessary public buildings, bridges, or roads, a county may levy and collect special taxes not to exceed one-fourth of one per centum. Amendment 202 provides for the levy of an educational tax and amendments 59 and 72 provide for the levy of hospital taxes only upon a vote of the people without regard to districts.

Ala. Code, tit. 12, § 130 (1940) (Recomp. 1958) provides that, out of the proceeds of any road tax levied by a county governing body, one-half of the money collected on property within the municipality must be paid to the municipality for use by it in maintaining its streets.

Finally, it is settled law in Alabama that the county's authority to tax is derived from the legislature and may be withheld, withdrawn, or modified (subject to intervening contractual rights). Newton v. City of Tuscaloosa, 251 Ala. 209, 36 So.2d 487 (1948).

No. 693-E (Randolph County, Alabama)

Randolph County is divided into fourteen election precincts (Beats). Its Court of County Commissioners consists of four members, each elected by the qualified electors of the district of which he is a resident. The four districts [fol. 60] are described as follows:

District No. 1, comprising Beats 1, 6 and 14, having a population of approximately 3,800;

District No. 2, comprising Beats 2, 3, 7 and 13, having a population of approximately 2,350;

District No. 3, comprising Beats 4, 5 and 11, having a population of approximately 4,300;

District No. 4, in which the City of Roanoke is situated, comprising Beats 8, 9, 10 and 12, having a population of approximately 9,500.

This division of the county into districts and apportionment of membership of the court resulted from interplay of the provisions of Acts Nos. 299 and 300 of the Regular Session of the Legislature of Alabama, each effective August 10, 1965. When Act No. 299 was ratified by a county-wide referendum on November 30, 1965, Act No. 300 became operative.

From official records it appears that the total assessed value of property within the county for ad valorem taxes is $15,539,840, of which amount property situated within District No. 4 accounts for $9,984,590. The only possible constitutional argument which plaintiffs can muster is that because, after the general election in November, 1966, the residents of District No. 4, constituting 49% of the total population and owning 64% of the total assessed value of property in the county, will have only a 29% voice in the levying of taxes and the expenditure of monies collected therefrom by the county,[2] the acts producing this result

[2] See the discussion in note 1 *supra*.

are violative of the equal protection clause of the fourteenth amendment.

The prayers of plaintiffs for ultimate relief in these two cases are identical: (1) that the underlying acts of the Alabama Legislature be declared unconstitutional; (2) that [fol. 61] it be required that the members of board and court be elected at large by the votes of all qualified electors within the county, or (3) that the elective districts by judicial fiat be reapportioned on the basis of population.

In the final analysis, plaintiffs are forced to fall back upon the argument that a purely mechanical application of the "one person, one vote" apothegm of *Gray* v. *Sanders*[3] to non-sovereign political subdivisions of a state is required by the equal protection clause of the fourteenth amendment. No opinion of the Supreme Court has suggested such a basis for judicial intervention in a state's geographical distribution of electoral strength among its political subdivisions.[4] On the contrary, militating against such an openhanded approach is the reasoning of Mr. Chief Justice Warren in *Reynolds* v. *Sims*, 377 U.S. 533, 575 (1964):

> "Political subdivisions of States—counties, cities, or whatever—never were and never have been considered as sovereign entities. Rather, they have been traditionally regarded as subordinate governmental instrumentalities created by the State to assist in the carrying out of state governmental functions. As stated by the Court in *Hunter* v. *City of Pittsburgh*, 207 U.S. 161, 178, these governmental units are 'created as con-

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[3] 372 U.S. 368 (1963).

[4] Prior to 1962, federal courts historically had refused to interfere with the arrangement of internal political subdivisions of the states. In *South* v. *Peters*, 339 U.S. 276 (1950), in a per curiam opinion, the Supreme Court stated at 277:

> "Federal courts consistently refuse to exercise their equity powers in cases posing political issues arising from a state's geographical distribution of electoral strength among its political subdivisions [citing cases]."

venient agencies for exercising such of the governmental powers of the State as may be entrusted to them,' and the 'number, nature and duration of the powers conferred upon [them] . . . *and the territory over which they shall be exercised rests in the absolute discretion of the State.*'" (Emphasis added.)

[fol. 62] As we read *Baker* v. *Carr*, 369 U.S. 186 (1962), and its progeny, to justify judicial penetration of the "political thicket," there must co-exist a serious wrong, as for example the long-continued failure of a legislature through inertia, apathy, or willful refusal to reapportion itself in obedience to the mandate of the state law,[5] the whimsical relocation of the boundary lines of a local government for the obvious purpose of depriving Negroes of their right to vote,[6] or the absence of a political remedy resulting from the "stranglehold" of a minority on the legislative processes.[7]

The numerical imbalance demonstrated by simple statistics falls far short of proving invidious discrimination. The Houston County Board, as presently constituted, has been in existence for less than ten years, and the Randolph County Court, under the acts complained of, will not come into being until after the general election in November of this year. Neither has the power to reapportion itself.

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[5] Burns v. Richardson, 34 U.S.L. Week 4365 (U.S. April 25, 1966); Reynolds v. Sims, 377 U.S. 533 (1964); WMCA, Inc. v. Lomenzo, 377 U.S. 633 (1964); Maryland Comm. v. Tawes, 377 U.S. 656 (1964); Davis v. Mann, 377 U.S. 678 (1964); Roman v. Sincock, 377 U.S. 695 (1964); Lucas v. Colorado General Assembly, 377 U.S. 713 (1964).

To the foregoing authorities dealing with legislative apportionment may be added *Wesberry* v. *Sanders*, 376 U.S. 1 (1964) (apportionment of congressional districts) and *Gray* v. *Sanders*, 372 U.S. 368 (1963) (county-unit system as applied in a statewide election).

[6] Gomillion v. Lightfoot, 364 U.S. 339 (1960).

[7] Cases cited in note 5, *supra*.

The Legislature of Alabama, which alone has the power to redistrict these counties, has never been advised by any definitive mandate that it has a duty to do so.

Moreover, of equal if not greater importance, in the Houston County case the plaintiffs and the urban voters they represent have a clearly available political remedy. [fol. 63] Surely the 61% of the qualified electors of Houston County who reside within the City of Dothan have the power at the ballot box to elect representatives to the state legislature and through them, under the prevailing rule of local courtesy, obtain the desired redistricting.

It is our considered opinion that so long as the people of a state are afforded equal protection by true equality of representation in the state legislature the courts ought not to interfere with county governments of limited, as distinguished from general, power, and which have been created by the legislature as involuntary political subdivisions of the state.[8] This is especially true where such governments are not granted the power to reapportion themselves.

When the Alabama Legislature shall have been constitutionally reapportioned in conformity with the standards explicated in *Sims* v. *Frink*,[9] to it may safely be committed the decision as to whether all county governments should be apportioned strictly according to population or whether in some counties, including these two, there exists "a rational justification" for some other form of districting.[10]

It is not for us to forecast the likelihood that the Supreme Court will ultimately extend the principles of *Reynolds* v. *Sims, supra*, to the tens of thousands of subordinate political units of the states which have been delegated some power to which the label "legislative" may be at-

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[8] Kendrick v. State *ex rel* Shoemaker, 256 Ala. 206, 54 So.2d 442 (1951); Moore v. Walker County, 236 Ala. 688, 185 So. 175 (1938); Montgomery v. State, 228 Ala. 296, 153 So. 394 (1934); Askew v. Hale County, 54 Ala. 639 (1875).

[9] 208 F. Supp. 431 (M.D. Ala. 1962).

[10] Baker v. Carr, 369 U.S. 186, 235 (1962).

[fol. 64] tached. Some courts have essayed to do so,[11] while others have been content to await the development of judicial standards in this comparatively uncharted area of constitutional law.[12] A warning to make haste slowly may be read into refusal by the Supreme Court on two occasions to consider cases involving the contention that the federal constitution requires local governmental bodies below the state level be apportioned on a population basis.[13]

An analysis of the powers delegated to courts of county commissioners in Alabama for the purpose of affixing the labels, "judicial," "executive," "legislative," "administrative" and "ministerial" would be a profitless exercise in semantics. In broad summary, the legislative power of such courts may be described as (1) granted by the legislature; (2) quasi-legislative in the sense that it has less than the power to make fundamental law; (3) limited in scope to, and operating within; only the areas authorized by the legislature for county action; (4) exercised by a body vested with judicial power; (5) neither administrative nor [fol. 65] executive nor judicial.[14]

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[11] Ellis v. Mayor and City Council of Baltimore, 234 F.Supp. 945 (D.Md. 1964); Simon v. Lafayette Parish Police Jury, 226 F.Supp. 301 (W.D. La. 1964); Bianchi v. Griffing, 217 F.Supp. 166 (E.D. N.Y. 1963); Brower v. Bronkenia, Cir. Ct. for Kent County, Michigan (Sept. 11, 1964); Seaman v. Fedourich, 45 Misc.2d 940, 258 N.Y.S.2d 152 (Sup.Ct. 1965); Goldstein v. Rockefeller, 45 Misc.2d 778, 257 N.Y.S.2d 994 (Sup.Ct. 1965); State *ex rel* Sonneborn v. Sylvester, 25 Wis.2d 177, 130 N.W.2d 569 (1964).

[12] McMillan v. Wagner, 239 F.Supp. 32 (S.D. N.Y. 1964); Johnson v. Genessee County, Michigan, 232 F.Supp. 567 (E.D. Mich. 1964); Tedesco v. Board of Supervisors of Elections for the Parish of Orleans, 43 So.2d 514 (La.Ct.App. 1949); Glass v. Hancock County Election Comm'n, 250 Miss. 40, 156 So.2d 825 (1963).

[13] Glass v. Hancock County Election Comm'n, 378 U.S. 558 (1964) (per curiam); Tedesco v. Board of Supervisors of Elections for the Parish of Orleans, 339 U.S. 940 (1950) (per curiam).

[14] By Ala. Code, tit. 12, § 5 (1940) (Recomp. 1958) the court of county commissioners is constituted a court of record. Sections 11 and 12 define its original jurisdiction and spell out many of its

It is our firm opinion that the limits imposed by the Alabama constitution on the delegation of power by the state legislature prevent such courts from having or exercising the qualitative or quantitative legislative power which is significant under *Baker* v. *Carr*. Section 44 thereof vests legislative power in the legislature and the constitutional power to make laws may not be delegated.[15]

We therefore conclude that plaintiffs have been deprived of no rights under the prevailing rationale of pertinent Supreme Court opinions, epitomized by Mr. Justice Black as follows: "No right is more precious in a free country than that of *having a voice in the election of those who make the laws under which, as good citizens, we must live.* Other rights, even the most basic, are illusory if the right to vote is undermined." (Emphasis added.)[16] Accordingly, an order will be entered dismissing each of these actions without prejudice.

Done, this the 10th day of June, 1966.

Walter P. Gewin, Circuit Judge, Seybourn H. Lynne, District Judge.

Johnson, District Judge, dissents.

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powers. Commingled are powers which may be characterized as judicial, executive and legislative. See State *ex rel* McIntyre v. McEachern, 231 Ala. 609, 166 So. 36 (1936); Tuscaloosa County v. Alabama Great Southern RR., 227 Ala. 428, 150 So. 328 (1933); State *ex rel* Chilton County v. Butler, 225 Ala. 191, 142 So. 531 (1932); Askew v. Hale County, *supra*, note 7. In *State ex rel McIntyre* v. *McEachern* the Supreme Court of Alabama described such court as an administrative body, as a court, and "sometimes it acts somewhat in a legislative capacity." 231 Ala. at 612, 166 So. at 38.

[15] Fox v. McDonald, 101 Ala. 51, 13 So. 416 (1893).

[16] Wesberry v. Sanders, 376 U.S. 1, 18 (1964).

[fol. 66]

Civil Action No. 860-S

EARL C. MOODY, et al.,

v.

RICHMOND M. FLOWERS, et al.

Civil Action No. 693-E

JOHN B. STEVENSON, et al.,

v.

RICHMOND M. FLOWERS, et al.

JOHNSON, District Judge, Dissenting:

I respectfully dissent.

I think the conclusion is inescapable that the principles of *Reynolds* v. *Sims*[1]—that is, the principles of equality among voters within a state and the fundamental precept that representative government is one of equal representation for an equal number of people without regard to race, sex, economic status, or place of residence[2]—apply to these local organs of government. These boards of revenue perform important governmental functions, and are designed to be controlled by the voters over which they have jurisdiction. The exercise of their powers, which include the important powers to levy and collect taxes,[3] to spend for a

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[1] 377 U.S. 533 (1964).

[2] These principles had been nurtured a year earlier in *Wesberry* v. *Sanders*, 376 U.S. 1, 18 (1964): "[O]ur Constitution's plain objective [is] . . . making equal representation for equal numbers of people the fundamental goal . . . . That is the high standard . . . which the Founders set for us."

[3] See Title 12, §§ 12(3), 185, 186, 191; Title 51, § 71; Title 29, § 31, Code of Alabama.

variety of governmental and public purposes,[4] and to establish, change, discontinue, and repair roads,[5] materially and substantially affects the lives, property, and welfare of the citizens of Houston and Randolph Counties. Moreover, in discharging their duties, the boards are no less representative or reflective of the views of the citizens because they are smaller than the state unit. To the contrary, rather than limit the principles of *Reynolds*, as the majority opinion does, it would seem that these principles might well have their most meaningful application at the local level. Viewed another way, if, as seems evident, the thrust of the Supreme Court decisions is that it is inherent within the concept of "equal protection" that a person has a substantial right to be heard and to participate, through his elected representatives, in the business of government on an equal basis with all other individuals, no reason or justification exists for differentiating so far as that right is concerned, between governmental business carried on at the state level and that conducted on the local level.

The two cases primarily relied on by the majority are [fol. 67] *Glass* v. *Hancock County Election Commission*, 156 So. 2d 825 (Miss. 1963), and *Tedesco* v. *Board of Supervisors of Elections*, 43 So. 2d 514 (C.A. La. 1949). In *Glass*, the Supreme Court of Mississippi had affirmed the denial of injunctive relief on the theory that there was an adequate remedy at law, namely, available statutory procedures for redistricting. Accordingly, I do not find dismissal of the appeal by the Supreme Court, 378 U.S. 558 (1964), either controlling or indicative of the course this Court should follow. In *Tedesco*, the Louisiana appellate court concluded that the statute therein involved was not violative of any provision of the Constitution, although there was clear disparity of population, and affirmed the judgment dismissing the suit. Plaintiff's appeal to the Su-

[4] See Title 12, §§ 11, 12, 16, 17, 18, 19, 22, Code of Alabama.

[5] See Title 12, § 11, Code of Alabama.

preme Court was "dismissed for want of a substantial federal question." 339 U.S. 940 (1950).

Reliance on *Tedesco*, in the cases now before this Court, is misplaced. First, I find it very difficult to accept the proposition that *Tedesco*, decided in 1950, can be taken to indicate a judicial attitude on the part of the Supreme Court "to make haste slowly" in the application of a doctrine formulated in 1964. Second, I think it is important to emphasize that *Tedesco* did not hold that the Equal Protection Clause did not extend to the rights of voters in municipal elections or that no relief for the deprivation of the constitutional right of equal representation was available in the federal courts. *Tedesco* merely held that under the doctrine then prevailing the question of reapportionment was not justiciable. On this point, *Tedesco* was revoked by the Court in *Baker* v. *Carr*, 369 U.S. 186 (1962):

> [T]he refusal to award relief in *Colegrove* . . . resulted only from the controlling view of a want of equity. *Nor is anything contrary to be found in those per curiams that came after Colegrove.* (Emphasis added.) 369 U.S. at 234.

Justice Clark, concurring in *Baker*, said this of *Tedesco*:

> Similarly, the Equal Protection Clause was not invoked in *Tedesco* v. *Board of Supervisors* . . . . 369 U.S. at 252, n. 2.

And Justice Douglas, also concurring in *Baker*, said:

> With the exceptions of *Colegrove* v. *Green* . . . and the decisions they spawned, the Court has never thought that protection of voting rights was beyond judicial cognizance. *Today's treatment of those cases removes the only impediment to judicial cognizance of the claims stated in the present complaint.* 369 U.S. at 249-50. (Emphasis added.)

Thus, if anything, the rejection of *Tedesco* by *Baker* indicates the question is appropriate for judicial consideration.

Moreover, as a general proposition, I do not find anything [fol. 68] sufficiently extraordinary about these cases which would justify a court's refusing to grant relief on the basis that "It is not for us to forecast the likelihood that the Supreme Court will ultimately extend the principles of *Reynolds* v. *Sims* to the . . . subordinate political units of the states . . . ." Thus, just as this Court did not hesitate to consider the propriety of applying the newly developed principles of *Brown* v. *Board of Education*, 347 U.S. 483 (1954), to the area of public transportation in *Browder* v. *Gayle*, 142 F. Supp. 707 (M.D. Ala.), aff'd per curiam, 352 U.S. 903 (1956)—even though *Plessy* v. *Ferguson*, 163 U.S. 537 (1896), had not been expressly overruled—or, in recognizing new developments in the area of due process of law, to consider, without the Supreme Court's first having done so, whether women should be allowed to serve on juries, *White* v. *Crook*, 251 F. Supp. 401 (M.D. Ala. 1966), we should not in the present cases cling to the doctrine of an older jurisprudence (*Tedesco*), or, in the cloak of judicial restraint and forbearance, decline to exercise jurisdiction in cases where the right to judicial relief is clear.

Nor do I find the argument that so long as the people of a state are afforded equal protection by true equality of representation in the state legislature the courts ought not to interfere with county governments "which have been created by the legislature as involuntary political subdivisions of the state." It cannot seriously be contended that the proscriptions of the Fourteenth Amendment do not extend to local governments, or that the states may conduct their affairs with absolute discretion through their local agencies or appendages without recognizing and complying with basic constitutional principles. In *Cooper* v. *Aaron*, 358 U.S. 1 (1958), the Court stated:

> [T]he prohibitions of the Fourteenth Amendment extend to all action of the State denying equal protection

> of the laws; whatever the agency of the State taking the action . . . or whatever the guise in which it was taken . . . . 358 U.S. at 17.

In this connection, see also *Gomillion* v. *Lightfoot*, 364 U.S. 339 (1960), where the Court stated:

> Legislative control of municipalities, no less than other state power, lies within the scope of relevant limitations imposed by the United States Constitution. . . .
>
> • • •
>
> The opposite conclusion . . . would sanction the achievement by a State of any impairment of voting rights whatever so long as it was cloaked in the garb of the realignment of political subdivisions. 'It is inconceivable that guaranties embedded in the Constitution of the United States may thus be manipulated out of existence.' 364 U.S. at 344-45.

[fol. 69] It was on the basis of these authorities and this reasoning that the Supreme Court of Wisconsin concluded in the case of *State ex rel. Sonneborn* v. *Sylvester*, 26 Wis. 2d 43, 132 N.W. 2d 249 (1964):

> Characterizing counties as "political subdivisions created to perform functions of the state locally and existing as a result of the superimposed will of the state" or as "pure auxiliaries of the state" or as "an arm of the state" or "local organizations" which rank low down on the scale or grade of corporate existence," or "quasi municipal corporations" . . . is not determinative of whether the Fourteenth Amendment applies to their composition when the members of a county board are determined by the elective process.
>
> • • •
>
> County boards . . . must be considered a unit of government which should be equally representative of the people of the county. 26 Wis. 2d at 55-56.

It was also in recognition of these clear principles that Justice Fuld, speaking for the highest court in the State of New York, in *Seaman* v. *Fedourich*, 16 N.Y. 2d 94, 262 N.Y.S. 2d 444 (1965), stated:

> It is axiomatic that local governmental units are creations of, and exercise only those powers delegated to them by the state . . . and certainly if the latter may exercise its legislative powers only in a body constituted on a population basis, any general elective municipal organ to which it delegates certain of its powers must, by a parity of reasoning, be subjected to the same constitutional requirement. 262 N.Y.S. 2d at 449.

One of the primary bases for my being unable to agree with the majority lies in the logic of this position. The judicial support for such position is impressive.*

Finally, the majority opinion indicates that "The Legislature of Alabama, which alone has the power to redistrict these counties, has never been advised . . . to do so." It is, of course, true that the policy of courts in the area of reapportionment has been to accord petitioners a full op-

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* See *Delozier* v. *Tyrone School Board*, 247 F. Supp. 30 (W.D. Pa. 1965). (local school board); *Bianchi* v. *Griffing*, 238 F. Supp. 997 (E.D.N.Y. 1965) (county board of supervisors); *Damon* v. *Lauderdale County Election Commissioners*, Nat'l. Municipal League, Court decisions on Legislative Reapportionment, Vol. 13, p. 139 (Civil Action No. 1197-E, U.S. Dist. Court, S.D. Miss., Oct, 21, 1964); *Ellis* v. *Mayor and City Council of Baltimore*, 234 F. Supp. 945 (D. Md. 1964) (city council); *Hanlon* v. *Towey*, 34 LW 2654 (Supreme Court of Minn. May 20, 1966) (county commissioners); *Angostini* v. *Lasky*, 46 Misc. 2d 1058, 262 N.Y.S. 2d 594 (1965) (county board of supervisors); *Seaman* v. *Fedourich*, 16 N.Y. 2d 94, 262 N.Y.S. 2d 444 (1965) (city council); *Mauk* v. *Hoffman*, 209 A. 2d 150 (1965) (county board of freeholders); *Matter of Goldstein* v. *Rockefeller*, 45 Misc. 2d 778, 257 N.Y.S. 2d 994 (1964) (county board of supervisors); *State ex rel. Sonneborn* v. *Sylvester*, 26 Wis. 2d 43, 132 N.W. 2d 249 (1964); *Brouwer* v. *Bronkema*, Case No. 1855, Cir. Court Kent County, Mich. 1964, (board of supervisors). See also *Lynch* v. *Torquato*, 343 F. 2d 370, 371-72 (3rd Cir. 1965).

portunity to avail themselves of whatever political remedy they might have.[1] In invoking such a judicial policy, how-
[fol. 70] ever, the proper procedure is not to dismiss the petitions, but to retain jurisdiction and stay the proceedings to allow the State a reasonable time to adopt a valid scheme of reapportionment. I would concur in such a disposition of the cases. For the several reasons stated, I cannot concur in the dismissal of these cases.

Done, this the 14th day of June, 1966.

Frank M. Johnson, Jr., United States District Judge.

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[1] See the procedure followed by this Court in *Sims* v. *Frink*, 208 F. Supp. 431 (1962), and *Sims* v. *Baggett*, 247 F. Supp. 96 (1965), where in recognition of the judicial policy of affording citizens, through their legislature, a reasonable opportunity to secure their political remedies, this Court, after recognizing the controlling constitutional principles, at first afforded the Alabama Legislature an opportunity to reapportion, and then, upon its failure to do so, acted only moderately and provisionally with the expressed hope that the Legislature would then provide for true reapportionment. The Supreme Court of the United States, in *Reynolds* v. *Sims, supra*, at page 586, expressly approved such a procedure when it stated: "We feel that the District Court in this case acted in a most proper and commendable manner. . . . And it correctly recognized that legislative reapportionment is primarily a matter for legislative consideration and determination, and that judicial relief becomes appropriate only when a legislature fails to reapportion according to federal constitutional requisites in a timely fashion after having had an adequate opportunity to do so."

[fol. 71]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION
Civil Action No. 860

EARL C. MOODY, et al., Plaintiffs,

vs.

RICHMOND M. FLOWERS, et al., Defendants.

ORDER DISMISSING CAUSE—June 10, 1966

In conformity with the opinion of the court contemporaneously entered herewith:

It is Ordered, Adjudged and Decreed by the court that this action be and the same is hereby dismissed without prejudice and that the costs of court incurred herein be and the same are hereby taxed against plaintiffs for which, unless presently paid, execution may issue.

Done, this the 10th day of June, 1966.

Walter P. Gewin, Circuit Judge, Seybourn H. Lynne, District Judge.

Johnson, District Judge, dissents.

[File endorsement omitted]

[fol. 75]

IN THE UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF ALABAMA

SOUTHERN DIVISION AND EASTERN DIVISION

Civil Action No. 860-S

EARLE C. MOODY, as Mayor of the City of Dothan, Alabama, and PARNELL S. LEWIS and JAMES P. HALL, as members of the Board of Commissioners of the City of Dothan, Alabama, and EARLE C. MOODY, PARNELL S. LEWIS and JAMES P. HALL, individually, for themselves, jointly and severally, and for all others similarly situated

VS.

RICHMOND M. FLOWERS, Attorney General of the State of Alabama; ROY MAYHALL, Chairman of the Alabama State Democratic Executive Committee; THOMAS H. BRIGHAM, Chairman of the Alabama State Republican Executive Committee; CARL E. SELLERS, Judge of Probate of Houston County, Alabama; JAMES HERRING, Sheriff of Houston County, Alabama; WILLIAM G. HAUSE, Chairman of the Houston County Democratic Executive Committee; ALFRED J. SALIBA, Chairman of the Houston County Republican Executive Committee; and W. G. BOND, J. W. CALHOUN, W. H. HICKS, W. E. YANCE, and J. B. DAVIS, as members of the Board of Revenue and Control of Houston County, Alabama.

Civil Action No. 693-E

JOHN B. STEVENSON, COFIELD WIDNER, CHARLES F. NEIGHBORS, J. B. EASTERWOOD and ROBERT Q. BARTON, for themselves, jointly and severally, and for all others similarly situated

vs.

RICHMOND M. FLOWERS, Attorney General of the State of Alabama; ROY MAYHALL, Chairman of the Alabama State Democratic Executive Committee; THOMAS H. [fol. 76] BRIGHAM, Chairman of the Alabama State Republican Executive Committee; STELL BENEFIELD, Judge of Probate of Randolph County, Alabama; C. W. THOMPSON, Sheriff of Randolph County, Alabama; GROVER L. POOLE, Clerk of the Circuit Court of Randolph County, Alabama; JAMES PEEK, Chairman of the Randolph County Democratic Executive Committee; SAM CARPENTER, JR., Chairman of the Randolph County Republican Executive Committee; and FRED McCAIN, GAY FOSTER, GUY HENDERSON and W. C. BEVERLY, as members of the Court of County Commissioners of Randolph County, Alabama.

Transcript of Evidence

Before: Hon. Walter P. Gewin, United States Circuit Judge; Hon. Seybourn H. Lynne, United States District Judge; and Hon. Frank M. Johnson, Jr., United States District Judge.

At: Montgomery, Alabama, April 8, 1966.

APPEARANCES:

For Plaintiffs (860-S): C. R. Lewis.

For Richmond M. Flowers: Gordon Madison.

For Carl E. Sellers, James Herring, W. G. Bond, J. W. Calhoun, W. H. Hicks, W. E. Yance, and William G. Hause: Godbold, Hobbs & Copeland (John C. Godbold and Truman M. Hobbs), W. G. Hardwick, and Jere C. Segrest.

For Plaintiffs (693-E): Lewis H. Hamner, Jr.

[fol. 77] For C. W. Thompson, Grover L. Poole, Sam Carpenter, Jr., Fred McCain, Gay Foster, Guy Henderson, and W. C. Beverly: Paul H. Hooton.

For Stell Benefield: Stell Benefield.

(The above-styled cases, having been consolidated for and coming on for hearing at Montgomery, Alabama, April 8, 1966, before the above-constituted Court, the following proceedings were had:)

COLLOQUY BETWEEN COURT AND COUNSEL

Judge Gewin: Be seated, please. Counsel ready in both of the cases to proceed?

Mr. Godbold: (Nodded to indicate affirmative reply)

Mr. Hobbs: (Nodded to indicate affirmative reply)

Judge Gewin: All right, sir. I believe the Moody case deals with Houston County; is that correct?

Mr. Hardwick: Yes, sir.

Mr. Lewis: Yes, sir; your honor.

Judge Gewin: All right; and as I understand, the parties —you have all—you have stipulated that all allegations of fact, factual allegations in the complaint, in the Moody case are admitted, and there is no dispute about factual allegations; is that correct?

Mr. Godbold: That is correct.

Mr. Lewis: That is correct for the City of Dothan, your honor.

Judge Gewin: All right; both sides say that is correct. [fol. 78] And about the only controverted issue in the Houston County case is the question of the duties actually

performed by the officials involved, the Commissioners and the Board of Revenue?

Mr. Godbold: That is generally the way we understand the issues.

Judge Gewin: All right, there are no other issues in that case, factual issues. All right.

Mr. Lewis: Except, your honor, I wanted to introduce this late qualified—list of qualified voters as of April 1 of '66.

Mr. Hobbs: (Nodded to indicate affirmative reply)

Judge Gewin: Is there any objection?

Mr. Hardwick: We have no objection.

Judge Gewin: It will be admitted. Anything else, sir?

Mr. Lewis: That's all, your honor.

Judge Gewin: All right, now—

Judge Johnson: File it with the Clerk.

Mr. Lewis: Your honor take it right now?

Judge Gewin: The parties will also now file with the Clerk any motions you have and so forth. In the Stevenson case, which the Stevenson case does relate to Randolph County.

Mr. Hammer: That is correct, sir.

Judge Gewin: As I understand your stipulation, there is no dispute of any factual allegations in your complaint, and both sides stipulate that all of the facts alleged therein are true and correct?

[fol. 79] Mr. Hamner: That is correct, your honor.

Mr. Hooton: And in the answers, too; is that right, Mr. Hamner?

Mr. Hamner: We had further agreed to stipulate that an election was held, a referendum on the Act in the County; we allege that in the complaint, and he sets that up in his answer, and that is true.

Judge Gewin: So stipulated.

Mr. Hammer: Also, we have agreed to admit for the edification of the Court three map overlays showing Randolph

County and the relationship of these districts which substantially conform to the facts as alleged in the complaint.

Mr. Hooton: (Nodded to indicate affirmative reply.)

Judge Gewin: Give it to the Clerk; it will be admitted without objection. Anything further in the Stevenson case?

Mr. Hooton: We might, if the—say this, that if the Court rules against us, why, we have no objection to reapportionment, if that is what they want, but we would like to have about—a delay, give us a chance to do it, ourselves.

Judge Gewin: All right, sir. Anything further, now, in the Stevenson case?

Mr. Hamner: No, your honor.

Judge Gewin: It is submitted to the Court on the—on the merits, then?

Mr. Hamner: Yes, sir; we would, as I say—do you want a [fol. 80] motion for summary judgment filed today?

Judge Gewin: Any motions that you wish to file, if you can't get it filed today, I suppose we could give you a day or two to file it.

Mr. Hamner: I would appreciate it if you would allow me the opportunity to go back to my office and prepare it.

(Court conferred.)

Judge Gewin: I think it is submitted, but if you wish to file motions—

Mr. Hamner: No, sir.

Judge Gewin: —we will give you time.

Mr. Hamner: No, sir; it would only be a motion for summary judgment on the merits.

Judge Gewin: Believe it is unnecessary.

Mr. Hamner: Thank you.

Judge Gewin: All right, the Dothan County—I mean the Stevenson, Randolph County case is now submitted.

Mr. Hamner: Yes, sir.

Judge Gewin: All right.

Mr. Lewis: Your honor, one more word, please, with reference to the City of Dothan case. There are certain exhibits attached to the complaint. If it is necessary to offer

them in evidence, we would want to offer those in evidence; I understood it would go with the stipulation, but we would like to offer each one of those exhibits, 1 through 4, which are attached to the complaint.

[fol. 81] Judge Gewin: Are the defendants familiar enough with those exhibits to state whether or not you are willing for them to come in by stipulation without objection?

Mr. Hardwick: Give us one minute.

Judge Gewin: Yes, sir.

Mr. Hooton: If the Court please, just one second in the other case.

Judge Gewin: This is the Stevenson case now?

Mr. Hooton: Yes, sir. What length of time would we have, a week or ten days?

Judge Gewin: Can't quite hear you, sir.

Mr. Hooton: Would we have a week or ten days to file our additional brief in the matter? I don't believe the Court stated any time you would like.

Judge Gewin: We will give you—give us just a moment; maybe we can fix the same time in both cases.

Mr. Hamner: May I say, your honor, that the election time is fast approaching, and we wouldn't want too much time.

Judge Gewin: Take judicial knowledge of that fact; everything is fast approaching these days.

Mr. Hardwick: We admit the exhibits attached to the complaint.

Judge Gewin: All right, sir. Does that suit you, Mr. Lewis?

Mr. Lewis: Yes, sir; we introduce them.

[fol. 82] Judge Gewin: They will be admitted. Now, the question is as to how long litigants will require to file whatever briefs you would like to file, and we would like to get whatever you wish to offer quickly, within—keeping within line with what you are able to do. How long do you think you will need in the Ran—in the Stevenson case?

Mr. Hamner: I wouldn't need over five days at the most.

Judge Gewin: That suit both sides?

Mr. Hooton: I think I would like to have ten days to answer his in case we have the right to make an answer.

Mr. Hamner: I believe even filing one—

Judge Gewin: Let's file simultaneous briefs.

Mr. Hooton: All right, sir.

Mr. Hamner: All right, sir.

Judge Gewin: We know what the issues are; we can file them simultaneously.

Mr. Hooton: I can make mine in a week; I am tied up in the next two or three days, I can make it in a week.

Judge Gewin: You are asking for seven days?

Mr. Hooton: Yes, sir.

Judge Gewin: What does the Houston County—

Mr. Lewis: That will be perfectly satisfactory, your honor, for Houston County, seven days.

Mr. Godbold: Your honor, we would like to reserve a [fol. 83] decision on that, if we may, until the testimony is in to see what time we might need on that if we might.

Judge Gewin: We will give you seven days in the Randolph County case, so you may go ahead and be working on your brief.

Mr. Hamner: Thank you, your honor.

Judge Gewin: We will hold up on the Houston County case to see how long you think you may need. All right, we will proceed in the Houston County case now.

Mr. Godbold: Your honor, before we take any testimony, may the record show that the same attorneys who appear on behalf of the various County officials also appear on behalf of William Hause, H-A-U-S-E, as Chairman of the Houston Democratic Executive Committee.

Judge Gewin: The record will so show. All right, you may proceed. I take it the plaintiffs have offered everything they wish to offer, and that the defendants will now proceed.

Mr. Lewis: Your honor, there is one—one exhibit which was not attached to the complaint, and that was the resolution passed by the Board of Commissioners of the City of

Dothan authorizing and empowering the filing and prosecution of this suit. I mentioned that in there and gave them a copy; I would like to introduce that as a last exhibit for the City of Dothan.

Mr. Godbold: There is no objection.

Judge Gewin: It will be admitted without objection. Anything further from the plaintiffs?

[fol. 84] Mr. Lewis: That is all, your honor.

Judge Gewin: If not, the witnesses will now be sworn, and we will proceed.

The Clerk: All witnesses, please raise your right hand. Do you and each of you solemnly swear that the testimony you give in this cause to be the truth, the whole truth, and nothing but the truth, so help you, God.

Mr. Godbold: Take the stand first.

Mr. Lewis: This is number 4. You marking these? That is Exhibit number 5 for the plaintiff, I believe.

HARVEY HICKS, a Defendant (860-S), having been duly sworn, testified as follows:

Direct examination.

By Mr. Godbold:

Q. Will you give us your name and position, please, sir?

A. Harvey Hicks, member of the Board of Revenue and Control, Houston County, District 3.

Q. Are you also the Vice Chairman of the Board of Revenue and Control?

A. Yes, sir.

Q. How long have you served thereon?

A. As Vice Chairman?

Q. On the Board at all?

A. Sixteen years, ending of this.

[fol. 85] Q. What part of Dothan County do you reside in?

A. District 3, eastern part.

Q. How often does the Board meet, Mr. Hicks?

A. Twice a month.

Q. I will ask you, if you will, to fix in your mind the period of, let us say, the last twelve to twenty-four months, and I want to ask you some questions directed to the duties that the Board of Revenue and Control has been performing during that time; over this period of twelve to twenty-four months, in your best judgment, how much time of the Board of Revenue and Control has been devoted to the establishment and maintenance and repair and construction of roads and bridges?

A. Eighty-five to ninety per cent.

Judge Gewin: Mr. Godbold, let me interrupt you to ask you a question. Evidently this body is operating under local Act—

Mr. Godbold: That's right.

Judge Gewin: —but I assume the duties they perform are substantially the same as those performed by Commissioners' Courts, I mean the law applicable is substantially the same?

Mr. Godbold: The local Act provides, your honor, that they have the same powers and duties as devolve upon Boards of Revenue and Commissioners' Courts generally.

Judge Gewin: Yes, and are those duties set forth in Title 12? I am trying to recollect.

[fol. 86] Mr. Godbold: They are, sir.

Judge Gewin: Title 12?

Mr. Godbold: Yes, sir.

Judge Gewin: All right; thank you.

Mr. Lewis: Also Title 19, your honor, gives the powers with reference to eminent domain.

Judge Gewin: Yes. No, just 12.

Q. Mr. Hicks, how does the Board of Revenue divide up among the members the duties relating to roads and bridges?

A. That is in the operation of the roads?

Q. Yes, sir?

A. We set up a program designating of the road that the Board picks out in his district, 1, 2, 3, 4, and 5; we turn that over to our County Engineer, and he sets that up as a—in our program.

Q. Does the program for roads and bridges for your district, for example, originate with you?

A. In my recommendations.

Q. You make that to the County Engineer?

A. That's right.

Q. Do the other members make similar recommendations to the County Engineer for their district?

A. They do.

Q. Now, how many of these Commissioners, by reason of the way in which the County is divided up into districts, are dealing purely with rural roads and bridges?

[fol. 87] A. Four of us.

Q. All right; when the County Engineer gets the proposed road and bridge program, what does he do with it?

A. He takes it and sets it in his program, and he works to that to the satisfaction of the Board of Revenue.

Q. Now, do you—do you reside in one of the districts that is not included in the City of Dothan?

A. That's right; yes, sir.

Q. Now, do you perform any duties other than in Board meetings?

A. No, sir.

Q. Relating to roads and bridges that are in the City?

A. No, sir.

Q. Who handles the road program of the County insofar as it relates to roads within the City?

A. The—the District 5 Commissioner.

Q. That is Mr. Davis?

A. Yes, sir.

Q. Who is not appearing here?

A. That's right.

Q. Now, what duties does Mr. Davis perform with a respect to the streets and roads within the City?

A. He brings his complaints to the Board of Revenue at our meetings; he has a request from the City of Dothan advising their Engineer, and it is put before the Board, and whatever he asks us for, we usually get it.

[fol. 88] Q. Now, does—does the County do any—perform any work or pay any of the bills for street and highway construction and maintenance within the City?

A. Nothing outside the Circle; we maintain all that.

Q. Well, now, what—what is the Circle?

A. That is Ross Clark Circle.

Q. That is the highway, superhighway circle around the City?

A. Yes, sir.

Q. About how many square miles of area are within the Circle?

A. I couldn't answer that.

Q. But outside the Circle, does the City completely maintain—does the County completely maintain the roads?

A. Yes, sir.

Q. Now, within the Circle, does the County aid and work with the City on certain of the road programs?

A. Certain occasions.

Q. Now, how do you determine on what occasions you shall work with them?

A. By the request of the City and the recommendation of the District 5 Commissioner.

Q. Well, now, in—

Judge Gewin: Does what they ask for always come forth?

Witness: Sir?

Judge Gewin: Do they always get what they ask for?

Witness: Never been turned down, your honor.

[fol. 89] Q. Does—what does this consist of within the City; for example, Mr. Hicks, would the County assist on any kind of road or street with the City or only on certain roads or streets?

A. They construct them and base them, and we—we—the County primes them and slags them for them; the County furnishes the material.

Q. Is this on any street or just the extensions upon the market road?

A. With the ones they designate.

Q. The ones they designate?

A. That's right.

Q. All right; now, let's go back, now, to your duties; out in the country, other than preparing the suggested road program for your district, what other duties do you perform relating to the roads in your district?

A. If I have a patron that calls me, I go and investigate it.

Q. If you—I didn't understand you?

A. If I have a call, a patron who calls me, I go and investigate it.

Q. Well, what—what kind of call would you get?

A. That would be a washout or pipe busted or a bridge out or turnoff to get off the road into the fields.

Q. Do you personally investigate these complaints?

A. Yes, sir.

Q. What do you do—then do about them?

A. I call the County Engineer and ask him to look into [fol. 90] this matter and designate the—give him the road that it is on.

Q. Now, do the people in your district originate—when they have a complaint, do you find generally that they come to you with it?

A. Mostly; yes, sir.

Q. Now, then you pass it on to the Engineer?

A. Yes, sir.

Q. Do you work with the Engineer and coordinate with him in seeing that that complaint is corrected?

A. Yes, sir.

Q. Does—do the other Commissioners from the rural areas perform similar duties—

A. Yes, sir.

Q. —with respect to the roads in their districts?

A. Yes, sir.

Q. Now, other than road duties that you have referred to and estimated consume eighty-five to ninety per cent of the Board's time, does—what—what of the other ten or fifteen per cent of the Board's time and effort; how much of that is devoted to purely administrative and routine and housekeeping duties?

A. That is my farming duties?

Q. No; for the whole Board?

A. For the whole Board?

Q. Yes, sir?

A. I—I couldn't answer that—

Q. Let me go back—

[fol. 91] A. —reasonable.

Q. —go back and rephrase the question; you have stated that the Board—eighty-five to ninety per cent of the Board's time is devoted to roads?

A. Yes, sir.

Q. Now, the other ten to fifteen per cent, is most of that also devoted to routine administrative and housekeeping duties?

A. Yes, sir.

Q. How many times a year does the Board take action of a legislative nature relating to assessment of taxes?

A. Once a year.

Q. Once a year?

A. One meeting a year.

Q. How many employees does the Board have?

A. About four, I—is correct, I believe; that is not count —including the Road and Bridge Department.

Q. All right; now, the Road and Bridge Department, which the County Engineer would—is it fair to say that the County Engineer is sort of the supervisor of that?

A. That's right.

Q. Now, does he do the hiring and firing—

A. He does.

Q. —of employees of the Road and Bridge Department?

A. He does.

Q. You have a merit system, or is this controlled by the Engineer?

[fol. 92] A. No, sir; we have no merit system.

Q. Now; so the Board, itself, has got three or four employees; you have got a clerk who looks after the paper work, don't you?

A. That's right.

Q. You got a County Attorney?

A. That's right.

Q. And who is your other one, and the Engineer?

A. Engineer.

Q. And is that it?

A. That is—Assistant Engineer, I guess.

Q. Assistant Engineer?

A. Yes, sir.

Q. Mr. Hicks, during all the time that you have been on the Board, has there been registered with the Board any complaint by the City of Dothan or its representatives that the Board in its actions in carrying out the programs you have indicated is discriminating or—against the City or abusing its authority in any way?

A. We never tried to discriminate against it.

Q. Have you had any complaints to such effect?

A. Not to my knowledge.

Q. And you have been on the Board how long?

A. Sixteen years.

Q. With a respect—there has been introduced here a resolution of the City Commission in Dothan calling for the [fol. 93] filing of this suit; prior to the adoption or the time that this controversy came up, was there any demand by the City of Dothan that the Board of Revenue attempt to take any action to get itself reapportioned or redistricted?

A. No, sir.

Q. Now, Mr. Hicks, is there—without going into the details of election procedures, is campaigning already under

way in Houston County with respect to the Democratic Primary that is to be held in May; are candidates already qualified and campaigning?

A. Yes, sir.

Q. Are members of the County Board of Revenue, of which you are a member, qualified and campaigning for re-election at this time?

A. Yes, sir.

Q. Do some of them have opposition?

A. Yes, sir.

Q. Do you happen to know whether the Republican—and I take it they nominate by Committee or by convention in Houston County; they don't have a primary, do they?

A. I don't know, sir.

Q. Mr. Hicks, are all of the roads in the County and outside the traffic circle around Dothan County maintained unless they are State or Federal?

A. Yes, sir.

Q. About how many roads—miles of County road are there that the County maintains, approximately?

[fol. 94] A. Well, the paving and all is around eleven hundred miles in the County.

Q. About how many miles in your district that you look after?

A. I would have a fraction less than a fourth.

Q. Would all the other districts be roughly comparable?

A. Yes, sir.

Q. Now, in the performance of the duties you have outlined, is it of importance and significance, based on your experience, that you reside in the district whose roads you are looking after?

A. Yes, sir.

Mr. Godbold: That's all the direct.

Judge Gewin: Before you get into cross examination, Mr. Madison, I think perhaps you would like to make a statement for the record as to the position of the Attorney

General. We didn't call on you. I understand at our conference that—

STATEMENT OF ATTORNEY GENERAL

Mr. Madison: Yes, sir; I would like to state this; I think it is the position of the Attorney General's office, first, whether or not the "One man one vote" principle applies to what the Legislature does is to, itself, coordinate units within a county, and second, whether or not those subordinate units, like districts in this particular case we are talking about, constitutes a unit, itself, and where all the people in that unit vote that there is no room for the application of the "One man one vote," because it has already one been applied, and I think, thirdly, if all of those things might be decided against our position, then we think [fol. 95] it is a—it is the duty and function of the Court to allow the Legislature, itself, to make the correction. And in the brief, there may be something that I don't think of off hand now that I would include in it. I expect to write a short brief, but in substance, as I stated in the—in the office when we were discussing it, we—the Courts have gotten into this thing, and they got to come out at some point in some place. Now, as far as the Acts of the Legislature are concerned, as to the State, itself, and then you begin to go down the line; where are the Courts going to stop? Are they going down to beats or some other thing before they get through, or are we going to find a place somewhere along the line where we can have a cutoff place? I am interested in that, personally, because I have to attend a lot of these hearings like this one today where I don't seem to be necessary but proper. Thank you.

Judge Gewin: I understand, too, Mr. Madison, that the Attorney General does not take issue as to any of the facts which have been stipulated for the record?

Mr. Madison: That is correct. I state to the Court that our office believes—I state for the office—that the matter can be disposed of on questions of law.

Judge Gewin: I thank you, sir. Excuse me for interrupting; go ahead.

Cross examination.

By Mr. Lewis:

Q. Mr. Hicks, I believe you stated you had been a member [fol. 96] of the governing body of Houston County for about the past sixteen years?

A. Ending of this term will be sixteen.

Q. Prior to Act number 9 involved in this case, which was adopted by the Regular Session of the Legislature of Alabama in 1957, how many members was on this Board of Revenue, the governing body of Houston County?

A. At that time?

Q. Yes, sir?

A. Four.

Q. Four?

A. Yes, sir.

Q. So the—so—and that had—that had been the case since 1939, had it not, when that particular system was set up under an Act introduced by Mr. Hardwick there when he was in the Legislature?

A. That was in '57, wasn't it?

Q. No, I am talking about the Act which provided for the governing body prior to the '57 Act that was passed in 1939 providing for four Commissioners?

A. Yes, sir.

Q. I believe you said four?

A. Yes, sir.

Q. And out of that lot of Commissioners, there was no special Commissioner from—from the City of Dothan at all, was it; it was—Dothan was—was grouped in with a [fol. 97] couple of other beats, wasn't it?

A. Yes, sir.

Q. And under the '57 Act, that the first time that Dothan has had any district representation on that governing body of Houston County, isn't it?

A. To my knowledge.

Q. In your memory?

A. To my knowledge; yes, sir.

Q. Yes, sir; now, you said that in your judgment eighty-five to ninety per cent of your time was, or the work of the County, was done on construction and maintenance of roads; was that correct?

A. Yes, sir.

Q. Involved in the construction and maintenance of roads, the County has to—the County governing body has to authorize and direct the institution of eminent domain or condemnation proceedings wherever the property-owner is not willing to convey a right of way to the County; that is correct, isn't it?

A. We talked it over concerning right of way; is that your question?

Q. So you have to—you have to take that action as a governing body to authorize and direct the institution of eminent domain or condemnation proceedings to acquire private property, land, for the public use of the roads where that becomes necessary?

A. Yes, sir.

Q. That is true, isn't it; and you have done that many times during your sixteen years as a member of the Board [fol. 98] of Revenue or the governing body of Houston County, haven't you?

A. A few times; yes.

Q. A few times; how many?

A. I couldn't recall right off, truthfully.

Q. Actually, it has been quite a number of times, hasn't it, Mr. Hicks?

A. Yes.

Q. All right, sir; could you give the Court—strike that. Do you have sufficient knowledge and information from which to form a reasonably accurate judgment as to what percentage of the streets, public streets and roads inside the City of Dothan corporate limits that is maintained by Houston County as compared with the County roads that

are maintained by Houston County outside the corporate limits of the City of Dothan?

A. I couldn't answer that.

Q. If I told you—you know Mr. Horace Adams?

A. Yes, sir; I know him.

Q. He is the Assistant Engineer for Houston County, isn't he?

A. Yes, sir.

Q. Has been for a number of years?

A. Yes, sir.

Q. If I told you that he stated that not over five per cent, in his judgment, of the road construction and maintenance done by the Houston County in recent years has been inside the corporate limits of Dothan, the City of Dothan, as [fol. 99] compared with outside and in Houston County, would you say that would be correct or incorrect in your judgment based on your knowledge?

A. I agree with Mr. Adams on that basis.

Q. All right, sir. Now, I believe you stated that outside the circle—that is the Ross Clark Circle—

A. Yes, sir.

Q. —parkway, four-lane parkway, that goes all the way around Dothan, is it?

A. Yes, sir.

Q. Approximately thirteen miles in circumference—that the County maintains all roads in the corporate limits of the City of Dothan outside that Ross Clark Circle and inside the corporate limits?

A. Yes, sir.

Q. You testified that?

A. Yes, sir.

Q. Do they maintain the drains; does the County maintain the drains on those particular roads?

A. What do you mean?

Q. The drainage system on those roads—

A. If it is requested.

Q. —that you say they maintain?

A. If it is requested by Mr. Davis, we would.

Q. If it is?

A. Yes, sir.

Q. Does it have to be requested by Mr. Davis?

[fol. 100] A. I wouldn't say yes; I have no knowledge of that.

Q. Actually, don't you know that Houston County doesn't maintain the drains connected with these roads, public roads, of the City of Dothan outside its circleway but inside its corporate limits?

A. I wouldn't say.

Q. So you don't know?

A. I don't know.

Q. Are you familiar with the—where the old Dothan Municipal Airport was, Mr. Hicks?

A. Yes, sir.

Q. Are you familiar with where Mr. Collier Espy lives, subdivision he lives in?

A. No, sir; I don't know where he lives.

Q. As a matter of fact, isn't there a large section—are you familiar with where the Charles Wood Subdivision is, the new subdivision out south of the Montgomery highway, 231 north, and west of the airport road west of the circleway?

A. No, sir.

Q. Actually, you don't know, do you, whether the City or County maintains these public streets west of the circleway outside the circleway and east and north of the old Municipal Airport, do you?

A. I do not.

Q. Well, I understood you to testify, Mr. Hicks, that the County maintained all the streets?

A. Not in subdivisions; not in subdivisions.

[fol. 101] Q. Oh; well, I understood you to say all streets and public roads?

A. Not in subdivisions.

Q. Aren't there a great many subdivisions in the City of Dothan outside of the circleway?

A. I just don't know.

Q. You don't know?

A. I just don't know how many there are.

Q. There are a great many, though, aren't there?

A. I would think; yes.

Q. That is your judgment?

A. That is the best of my knowledge.

Q. Yes, sir. Now, you say the Board of Revenue levies taxes once a year; once is all they need to levy them for them to be in effect for the other three hundred sixty-five days, isn't it, Mr. Hicks?

A. Yes, sir.

Q. Haven't you—hasn't the Board of Revenue and Control adopted a resolution—strike that. I will ask you, Mr. Hicks, to examine certified copies—what purport to be certified copies of resolutions.

A. I can't read that; I haven't got my glasses; I don't think I could read it from yours.

Q. Well—

Judge Gewin: Lend him a pair of glasses; is that—

Mr. Lewis: That is all right, your honor; I believe [fol. 102] Judge Sellers is here, I can use him on this.

Q. But each year during the last—during the—all of the years that you have been a member of the Board of Revenue and Control of Houston County, since '57, and the Board of Revenue, which was the name of that governing body from '39 to '57, that Board of Revenue or the governing body has adopted a resolution levying general and special property taxes on all residents of Houston County; is that not so?

A. They have.

Q. That includes special school taxes, special county taxes for the hospital since the hospital was built several years ago there, and general property taxes, also, doesn't it?

A. Yes, sir.

Q. And those taxes are levied, collected, and used by Houston County in its General Fund except where levied

for special purposes, in which event it is placed in the Special Fund; is that correct?

A. Where they each are designated to go.

Q. Yes, sir; but the general property tax is how much; fifty—is five mills, isn't it? For the County? That is the general county ad valorem tax on real and personal property?

A. No, it is not—

Mr. Lewis: You stipulate that is correct?

Mr. Godbold: We are going to bring that out with Judge Sellers, Mr. Lewis.

Mr. Lewis: Good; good.

[fol. 103] Q. Mr. Hicks, you said there were about eleven hundred miles of public streets and roads in Houston County; is that right?

A. Yes; I said roads—

Q. In your best judgment?

A. —I didn't say anything about the streets.

Q. Roads?

A. Roads.

Q. Public—

A. Roads.

Q. —public rights of way for travel of vehicles?

A. Yes, sir.

Q. Do you know how many miles of streets or public roads outside the circleway and inside the corporate limits of the City of Dothan that Houston County maintained during the past few years?

A. No, sir; I don't.

Q. You don't; actually, it is a very small percentage of eleven hundred miles, isn't it, Mr. Hicks?

A. I would say yes.

Q. That is your best judgment. Now, Mr. Hicks, you testified that—that whatever Mr. J. B. Davis asked for in the way of road improvements in the corporate limits of City of Dothan, "We generally gave him"; was that in substance—

A. Yes, sir; that was his duties to perform.

Q. It took—it took a majority of that Board of five for him to get whatever he asked for, didn't it?

[fol. 104] A. Majority of—yes, sir; it would take that.

Q. And four out of the five are out—from outside the City of Dothan, outside the corporate limits of the City of Dothan; is that right?

A. That's right.

Q. And each one of those four represents a particular small district, territorially speaking and population wise, in Houston County which is not contiguous to the City of Dothan, don't they?

A. Yes, sir.

Q. You tell this Court that J. B. Davis generally gets whatever—what he—whatever he wants with reference to construction and maintenance of streets in the City of Dothan?

A. He hasn't been refused.

Q. You—

A. He hasn't been—we haven't denied—

Q. You haven't; you never denied him?

A. No, sir.

Q. How about Dexter Avenue; request made for hard surfacing that a number of months ago, wasn't it?

A. I don't remember that.

Q. How about Highland Avenue; there was a request made to Houston County a number of months ago for the hard surfacing of that, wasn't it?

A. I don't remember.

Q. How about Hedstrom—

[fol. 105] Mr. Lewis: What is that, Hedstrom Drive?

Mr. Parnell S. Lewis: Hedstrom Drive.

Q. How about Hedstrom Drive?

A. We went along with that.

Q. There was a request made for that in—six months ago?

A. The last meeting he was not there, and he had some requests, and we laid it over until this coming Monday.

Q. Uh, huh; but no—all of those streets in the City of Dothan outside—in the corporate limits of the City of Dothan, weren't they?

A. I won't say they were inside or out.

Q. But no action has been taken on them by the County yet, has it.

A. Not on two of them, I believe; maybe it was.

Q. Mr. Hicks, could you name for the Court streets in the City of Dothan out—that the County has—has hard surfaced in the last five years and the portions of those streets, approximately—I realize you can't remember them, the exact?

A. No, sir; I couldn't.

Q. You couldn't?

A. No, sir.

Q. And yet you tell them that they never turned down the City of Dothan's requests through its Commissioner—

A. No, sir.

Q. —J. B. Davis, for help in either maintaining or constructing streets within the corporate limits of the City of Dothan?

[fol. 106] A. No, sir.

Q. Now, you stated, I believe, that there are candidates who have qualified to run in the Democratic Party Primary for positions on the Board of Revenue and Control of Houston County, Alabama, I believe?

A. Yes, sir.

Q. They are running for the particular district under the—under the law—

A. Yes, sir.

Q. —now? Are those candidates well known in Houston County, Mr. Hicks? Are those candidates running for these offices—they are well known in Houston County, aren't they?

A. Yes, sir.

Q. So if this Honorable Court saw fit to hold this law unconstitutional in—in its provisions setting up these districts and the representation from them and directed the Democratic Party to hold this election at large, there is nothing to prevent the voters of Houston County or—from voting for these various candidates at large, is there?

A. I couldn't say whether that would interfere with it or not.

Q. Mr. Hicks, the—the Health Department, County Health Department, the City has no County Health Officers, does it?

A. No, sir.

Q. The County Health Officer is the Health Officer for the City and the County, isn't it?

[fol. 107] A. Yes, sir.

Q. And the City puts up considerable money to help operate the Health Department, doesn't it?

A. The County, too; yes, sir.

Q. And the City of Dothan has to put up all of the cost of the mosquito program in the City of Dothan, doesn't it?

A. I couldn't answer that, it is together.

Q. And furnish the employees and the equipment to spray those mosquitoes with; that's right, isn't it?

A. I—I wouldn't say it—I don't know that, truthfully.

Q. And the County cut funds of the Health Department in the past twelve months, didn't it, because they were short of funds?

A. We—we amended that budget to take care of it on the deficit that the County has.

Q. Uh, huh; but you did have it cut for a number of months so that the County Health Officer was stating he would have to close down his Department, practically speaking, didn't he?

A. No, sir.

Q. And he went to the City asking for financial help, didn't he?

A. Yes, sir.

Q. The same thing with reference to the Houston County Memorial Library happened, didn't it?

A. Yes, sir.

Q. Didn't the County cut the funds of the—of the Memorial Library from ten thousand to three?

[fol. 108] Mr. Parnell S. Lewis: They just cut them off completely for a few months.

Q. Did you cut those—how much did you cut off of the —of the funds?

A. We—

Q. Going to the—the Houston County Memorial Library?

A. I wouldn't say the dollar that was cut, but it was not cut; it was—we operated on what we had to operate on until we had—the indebtedness was paid so that we could borrow the money to reset the budget, amend it.

Q. You cut them out, actually, for a number of months, didn't you, and the City of Dothan had to make up the difference?

A. They didn't have to.

Q. They did, though, didn't they?

A. Well, they did.

Q. Or the bookmobile which serves the County through that County Library wouldn't have operated; wouldn't have been able to operate, would it?

A. I think it would.

Q. Well, the librarian said it couldn't, didn't he?

A. Huh?

Q. Didn't the librarian state that it couldn't be—

A. Yes, sir.

Q. All right; but you think it could?

A. Yes, sir.

[fol. 109] Mr. Lewis: That's all.

Redirect examination.

By Mr. Godbold:

Q. Mr. Hicks, just one or two more questions, please, sir. Mr. Hicks, has there been any—Mr. Lewis asked you in detail about the requests made by Mr. Davis, who is the—the member of the Board from Dothan; have there been any complaints registered with the rest of you by Mr. Davis that he felt the members elected from the rural areas were discriminating against him or abusing him in any way?

A. He has made the statement he was very well satisfied.

Q. All right, sir. Back when this local Act was enacted under which the Board now operates, this Act was advertised in the newspapers down there before publication in the usual way, wasn't it?

A. I would say yes.

Q. Before adoption, I mean?

A. I would say yes.

Q. Was there any objection at that time to the enactment of this law?

A. No.

Mr. Lewis: Object, unless he says he knows.

Q. Was there any objection you know of?

A. No, sir.

Q. Was there any objection voiced to the Board of Revenue as then composed?

[fol. 110] A. No, sir.

Mr. Godbold: No further questions.

Mr. Lewis: No further questions.

Mr. Godbold: We will take Judge Sellers.

Mr. Madison: Might I ask just one question right where he is now?

Judge Gewin: Go ahead.

By Mr. Madison:

Q. Do you know who the author of that bill was?
A. No, sir.

Mr. Madison: All right.

CARL SELLERS, a Defendant (860-S), having been duly sworn, testified as follows:

Direct examination.

By Mr. Godbold:

Q. Will you give us your name, please?
A. Carl Sellers, Judge of Probate, Houston County.
Q. Judge, do you preside over the meetings of the Board of Revenue and Control?
A. I do.
Q. Are you familiar generally with the duties of the Board of Revenue and Control and the manner in which those duties are performed?
[fol. 111] A. Fairly well.
Q. Judge, in your best judgment, how much of the time of the Board of Revenue is consumed with road and bridge matters?
A. You mean as individuals or as a Board operating as a whole?
Q. Let's take them both ways; as individuals?
A. Well, it has been testified eighty-five per cent of their time, no doubt, is given to complaints and looking after their respective districts.
Q. Well, do you think that is substantially correct for the individuals' time?
A. Possibly so; I am not out there with them.
Q. Now, in the Board meetings, is a substantial part of the Board's time in meetings devoted to road and bridge matters?
A. Yes, sir.

Q. As a matter of fact, there is a substantial part of the Board's time spent in dealing with rural delegations that come in wanting something done—that wanted something done about their roads and bridges?

A. That is correct.

Q. And, Judge, under this particular local Act under which the Board of Revenue and Control operates, I believe in Section 7, the Act, itself, specifically requires that the Commissioner is responsible for the roads and bridges in his district, does it not?

A. He is to see after them; yes.

[fol. 112] Mr. Godbold: Judge, your honors, we would like to offer into evidence at this time certified excerpts from the minutes of the meeting of the Board of Revenue and Control held February, '64, February, '65, and February, '66, in which the annual assessment of taxes by that Board is made.

Mr. Lewis: No objections, your honor; I believe they are copies that I obtained from Mr. Segrest yesterday.

Judge Gewin: They will be admitted without objection.

The Clerk: Defendants' Exhibit number 1.

Q. Now, let's look, Mr.—or Judge Sellers, at the February—at the March, I beg—it was March, March, '66, that it was done; let's look at the March, '66, resolution, and let me ask you about some of the taxes there referred to. The resolution first refers to a special tax of twenty-five cents per hundred dollars for the erection, construction, or maintenance of roads and bridges; now, is that the—is that twenty-five mill tax there referred to the fund out of which roads and bridges are maintained?

A. That and public buildings, as it so states here.

Q. And public buildings, also?

A. That is correct.

Q. Now, is that tax one voted on by the people, or is it levied by the Board under its general authority granted by the Legislature?

A. The Board levies no taxes.

Q. Well, is it—

[fol. 113] A. It is legislated that all taxes are voted on by the people.

Q. All right. Now, the next tax is a five mill or a fifty cents tax for general purposes; is that also a tax rate or a tax valuation that is established by popular vote?

A. Yes, sir.

Q. Let's look at the next one, the school tax of forty cents per hundred which Mr. Lewis refers to; is that also levied on the basis of a popular referendum?

A. Yes, sir.

Q. Next a special county tax on the public hospital; is that also levied on the basis of a public referendum?

A. That is correct.

Judge Gewin: Would it be easier, Mr. Godbold, to say they all are—

Witness: Right.

Judge Gewin: —and point out the exceptions?

Q. Are they all levied on the basis of a public referendum?

A. They are.

Q. All right, sir. Now, other than the taxes referred to in these minutes, is there any other tax of any kind levied or put on or established by the Board of Revenue?

A. None.

Q. And this is done once a year?

A. In February of each year.

Q. And is this done after consultation with the Tax [fol. 114] Assessor and in consultation with the Board of Equalization as to what the valuations are expected to be?

A. After the Tax Assessor and Equalization Board compile their books and get them in order, then they are presented to the Board for adoption, and we—it is a matter of routine that the Board adopts this levy.

Q. Now, is any of the money or tax revenues that are produced by this procedure divided or split with the City of Dothan?

A. None.

Q. Now, some of it is spent on street and road projects within the City, is it not?

A. No doubt; yes, sir.

Q. Other than this annual resolution relating to these taxes that are based on a popular referendum, does the Board adopt any other regulations or ordinances or statutes of a legislative nature?

A. No, sir.

Mr. Lewis: I object; conclusion of law.

Q. Well, other than this—

Mr. Lewis: As far as the witness is concerned.

Q. Other than this annual resolution—

Judge Gewin: We will note your objection and let him testify.

Q. Other than the establishment of these taxes, is the—are the duties of the Board almost one hundred per cent routine and administrative and custodial?

[fol. 115] A. They are.

Q. Let's talk about just a few of those custodial duties; do you perform duties like purchasing of supplies for the Court House, supplying the janitor or assigning offices in the Court House, furnishing telephones for County officers?

A. We do.

Q. Now, let's talk a minute about other County officials; now, there are various officials of the County who are elected; let's take, for example, the Sheriff; does the Board of Revenue have any authority or control over the Sheriff in the performance of his duties?

A. None.

Q. Over the Coroner?

A. None.

Q. Over the Circuit Judges?

A. No.

Q. Or Circuit Clerks?

A. None.

Q. Or Tax Assessor or Tax Collector?

A. No.

Q. Who fixes the compensation of the people who work in the County Road and Bridge Department?

A. Our Engineer.

Q. Who attends to the purchases of materials relating to the County Road and Bridge Department?

[fol. 116] A. The County Engineer makes a purchase on a requisition, then a purchase order is issued by the Chairman and sanctioned by the Board of Revenue.

Q. When the districts were established, Judge, that are in effect now, by the Board of Revenue and Control, did those follow established beat lines of beats already in existence?

A. Beats were already in existence.

Q. You didn't create any new boundaries of beats, did you?

A. Not that I—I don't believe so.

Q. All right, sir. Now, there is a reference in the Code, and Mr. Lewis has referred to it in the complaint, of the authority that the Board of Revenue has over stock law districts; are there any stock law districts in Houston County?

A. Not that I know of; it's—it's mentioned in Title 12, 12.

Q. Now, let's take, for example, the performance by the City of Dothan of its powers over policing traffic and public safety, which would be exercised by its Police Department under its City Commissioners; does the Board of Revenue exercise any similar authority through anybody?

A. No.

Q. You have no such authority?

A. No, sir.

Judge Gewin: Mr. Godbold, as a matter of law—as a matter of law, what would happen if the Board failed to pass the resolution you described as perfunctory or routine [fol. 117] levying the annual tax?

Mr. Godbold: I think—I think that the—I am talking off the top of my head, Judge, but I assume there has to be an annual action; we will comment on that in brief, I am not prepared to answer that.

Judge Gewin: All right, sir.

Witness: They do have to act once a year, in February of each year, I think it is spelled out in the Code, on February of each year that this levy shall be adopted by the Board.

Q. Has it always been adopted each year?
A. Yes, sir.

Judge Gewin: The question I asked, Judge, was what would happen if you didn't do it; do you know?

Witness: I don't know.

Q. Judge, does the—again, let's go back to the City; the City—is it fair to state that the City, through its regulatory agencies, regulates and controls businesses, for example, barber and beauty shops, taxicabs, bus lines, restaurants, slaughter houses, theaters, and so forth?

A. Inside of the City limits.

Q. Inside the City limits?

A. (Nodded to indicate affirmative reply)

Q. Does the Board of Revenue and Control of Houston County exercise, through any of its facilities, any control over businesses like that out in the County?

[fol. 118] A. None that I know of, unless there might be a health regulation, and then, of course, your County Health Officer would come in.

Q. Your County Health Officer attends to that, does he not?

A. Yes.

Q. Now, does the—does the County Board—under Title 12, Section 12, the County Board has authority to make certain appropriations for fairs, agricultural exhibits, 4-H clubs, home demonstration clubs, and so forth?

A. That is correct.

Q. Does it make such appropriations annually, and if so, how are they made; how do they come about?

A. Well, if they should do it, there would be a resolution offered by some—one of the Commissioners and put before the Board as a whole, and then action would be taken.

Q. In a—in making these appropriations of this nature that relate to promotion and advertising, are these primarily directed at rural activities?

A. Well, the County as a whole.

Q. The County as a whole. Judge, do you know how long the plaintiffs have been in office before this action was instituted; do you recall?

A. You mean the City Commissioners?

Q. Yes, sir?

A. Whatever the last—when was it, in October? I don't know what their fiscal term is; what is it, October beginning?

[fol. 119] Q. It was commenced after some of the plaintiffs had been in office about two months, was it not?

A. I don't know just how long.

Q. Would that be approximately right, two to three months?

A. I would think so.

Q. Do you know—

Mr. Godbold: —I suppose the Court would take judicial knowledge of the Probate Judge knows pretty well what is going on in politics in the County.

Witness: (Shook head to indicate negative reply)

Q. From your experience in politics in the County in the last few months, do you know of any effort by any of the City Commissioners to have qualified candidates for the

State Legislature committed to a program of seeking the type of redistricting that they seek in this lawsuit?

Mr. Lewis: Now, I object; irrelevant, incompetent, and immaterial what his judgment is of that and if it is a fact or not.

Judge Gewin: I believe we will sustain that.

Q. Does the—does Houston County have any outstanding County bonds, Judge?

A. The only thing we have outstanding is our Court House warrants, and that is through a—an authority.

Q. That is through a statutory corporation?

A. Right.

[fol. 120] Q. It is not an obligation of the City, itself—

A. No, sir.

Q. —is it?

A. No, sir.

Q. And there was a reference made in the prior examination to an appropriation for the Library and the fact that it was not—that sometime within—at least within recent history the County did not come up with money for the Library; now, Judge, does Houston County, like—operate under a restriction that it may not spend money it—it hasn't got?

A. That is correct.

Q. At that time did the County have the money?

A. Right at that time possibly they did not.

Q. Subsequently was that money appropriation restored?

A. It has been. From month to month; it hasn't been all for the entire year, but it is restored month by month.

Q. Your honor—Judge, in your dealings on behalf—well, in—just in your dealings in general, have there been any complaints registered to you by the City that the Board of Revenue and Control was in any way discriminating against the City through the four rural, one urban voting combination?

Mr. Lewis: Object, your honor; incompetent, irrelevant, and immaterial.

Mr. Godbold: Your honor, we think this goes to whether there is any discrimination.

[fol. 121] Judge Gewin: We will let it in for whatever it may be worth; note your objection.

Q. You may answer, Judge?

A. In a discriminatory—discriminatory manner, you say?

Q. Yes, sir?

A. I don't believe there has been any discrimination.

Q. Have there been any—

Mr. Lewis: Object to the answer; it is not responsive.

Q. All right, have there been any complaints or charges made to you that the rural people were discriminating against the urbanites?

A. Well, I have nothing in writing.

Q. Well, even orally—

Mr. Lewis: I—

Q. —what charge has been made of discrimination?

A. We have read the papers, and we know that there was a—copies of letters introduced whereby they—our representatives were requested to introduce such a bill, and it was not done.

Q. All right. Judge, the pay, that is, the pay for members of the Board of Revenue, is established by the Act, itself, is it not?

A. Correct.

Q. You don't set your own salaries?

A. No.

Q. The pay for the County Engineer is set by the Act, itself, is it not?

A. That's right, and the State.

[fol. 122] Q. Who—

A. The State participates in the County Engineer's salary.

Q. Who sets the pay for the Clerk?

A. The Board of Revenue.

Q. Now, the districts from which the members of the Board of Revenue and Control run are established by the Act, are they not?

A. Yes, sir.

Q. Back when the Act under which the Board of Revenue and Control presently operates was enacted, was it advertised before enactment in the usual way for local bills?

A. Yes, sir.

Q. Was there any objection voiced to its passage at that time to you?

A. Not to me that I—

Q. You hear of any?

A. You mean the present Board that now—that was before my time in office.

Mr. Godbold: I see; no further questions.

By Mr. Godbold:

Q. Judge, the power that—the power that the Board possesses and carries out is all done under direction of State statutes, is it not?

A. Yes, sir; yes, sir; we have to be governed by the Acts of the Legislature.

Q. And you do not enact—enact statutes and ordinances and regulations in the way that the Legislature does or the City Commission of Dothan does?

[fol. 123] A. No, sir.

Mr. Lewis: Object; the Court judicially knows that they—

Judge Gewin: I think we do.

Mr. Lewis: —don't operate like the State Legislature or the City—that all?

Mr. Godbold: (Nodded to indicate affirmative reply)

Cross examination.

By Mr. Lewis:

Q. Judge Sellers, I just heard you testify that you had—hadn't had any written objection to the present apportionment of the Board of Revenue and Control; is that correct?

A. I thought after this question was asked that when the two Boards—may I elaborate just for a second?

Q. No, sir; I will just—

A. (Nodded to indicate affirmative reply)

Q. Is that correct?

A. If I have had a written request, I don't recall; it could be that there was.

Q. Now, Judge, the tenor of your testimony was, as I took it, that there had been very little complaint made about this reapportionment matter; is that a fair deduction, conclusion from your testimony?

A. I have heard lots of discussion, Mr. Lewis.

Q. You have heard lots of discussion in the last many [fol. 124] months, have you not?

A. I surely have.

Q. As a matter of fact, you—as a matter of fact, isn't the Board of Revenue and Control, at the request of the Board of Commissioners of the City of Dothan, which is composed of the three complainants in this suit, initiate—didn't the City Commission, these plaintiffs, initiate three meetings with the Board of Revenue and Control prior to the—prior and subsequently to filing of this suit in an attempt to work out a fair and reasonable apportionment of the governing body of Houston County?

A. There were some meetings of the two bodies; yes, sir.

Q. There were three, were there not; you were not at the first one, were you?

A. I don't believe I was.

Q. You were at the last two, weren't you?

A. I think I have been in two.

Q. And your attorney, Mr. Hardwick, was at one of them, was he not?

A. I believe so.

Q. And the County Attorney, Mr. Jere Segrest, was at some of them, was he not?

A. I think so.

Q. What action did the Board of Revenue and Control take in response to those efforts, Judge?

A. Well, they had a roundtable discussion, and nothing [fol. 125] ever was congealed out of these meetings.

Q. They had a roundtable discussion, and the sum total of it was they were going to stay in the office, was that not true, just the way they were?

A. I—I don't know what their intention was; they—

Q. I say—I didn't say about the intention; the sum total was that these members of the Board of Revenue and Control stated that they were going to stay as was?

A. They preferred district wise, I believe.

Q. Now, Judge, have you ever read the letter or copy of the letter that was written by E. C. Moody, Earle C. Moody, Mayor, the City of Dothan, Alabama, on April 27, 1965, addressed to Honorable Charles H. Adams, Member of the Senate and Legislature of Alabama?

A. I saw a copy of that.

Q. You saw a copy of it; now—and a great deal of publicity was given to that letter by the Dothan Eagle, was it not, the only—the only newspaper published in Houston County—well, the only daily newspaper—

A. Yes.

Q. —published in Houston County?

A. Yes, sir.

Q. Very widely read newspaper, isn't it, in Houston County?

A. Yes.

Q. And that was April 27, 1964, which was seven days [fol. 126] prior to the meeting of the first Regular Session of the 1965 Legislature of Alabama, was it not?

A. I don't recall the dates, but it is thereabout, I would say; yes.

Q. Now, that was—that letter was very widely and hotly discussed by members of the Board of Revenue and Control, in your presence, too, was it not?

A. Everywhere, public in general.

Q. April 27, 1965—did I say '65—it is attached as Exhibit number 3 to the bill of complaint; you also familiar and read the very wide publicity given to the letter of Earle C. Moody, Mayor of the City of Dothan, Alabama, which was addressed to Honorable Robert J. Stembridge, Member of the House of Representatives, Legislature of Alabama, Dothan, Alabama, on April 27, 1965, which contained exactly the same information and request as contained in the letter written to Senator Charles H. Adams, didn't you?

A. Yes, sir.

Q. That letter was discussed very frequently and heatedly, was it not?

A. I don't know how heatedly, but it was discussed.

Q. It was discussed very frequently by the members of the Board of Revenue of Houston County, was it not?

A. It was discussed; that's right.

Q. And that was—that was during the Regular Session of the Legislature of '65?

[fol. 127] A. '65, I believe.

Q. And there was three Special Sessions of the Legislature of Alabama in 1965 held after the Regular Session in 1965, were there not?

A. Two or three.

Q. Two or three. Now, Judge, you can't contend, now, that the Board of Revenue and Control hadn't had adequate and long advance notice of the position of the Board of Commissioners of the City of Dothan, Alabama, with reference to the flagrant malapportionment existing on the Board of Revenue and Control of Houston County, can you?

A. I have been cognizant of it.

Q. You have been cognizant, and every member of that Board of Revenue and Control have been cognizant of it since May of 1965, has it not?

A. I would think so.

Q. Judge, you state that you didn't know what would happen if the ad valorem taxes were not levied by the Board of Revenue and Control of Houston County, Alabama, I believe?

A. I don't know what would happen, but I know we could not operate.

Q. Houston County wouldn't have money to operate on if it didn't do it, would you?

A. We could not operate; that is true.

Q. Judge, can you tell this Court of any higher legislative function than the power and right to levy and collect taxes [fol. 128] from the individuals subject to the—to the governing power of that governing body?

Mr. Godbold: Now, we object to that as a conclusion.

Judge Gewin: I believe that is a conclusion; we sustain that.

Q. Judge, I show you here what purports to be the report of the Department of Examiners of Public Accounts of the State of Alabama of Office of the Tax Assessor of Houston County of the regular assessments, period October 1, 1963, through September 30, 1964, and of the motor vehicle assessments, period April 16, 1964, through March 31, 1965, this report being filed September 9—29, 1965?

A. Correct.

Q. With an enclosing letter from Ralph P. Eagerton, E-A-G-E-R-T-O-N, Chief Examiner, Department of Public —Department of Examiners and Public Accounts, State of Alabama, dated September 29, 1965?

A. Right.

Q. Will you look at this total shown for gross valuation and exempted taxes appearing on—as Exhibit 1 on page one of this report which I have identified for you?

A. All right; I will.

Q. Will you state what the total gross ad valorem property assessments were for Houston County as shown by this report?

A. The valuation was thirty-one million, eight hundred forty-six thousand, five hundred twenty dollars.

[fol. 129] Q. Will you state now the gross valuation of that same assessments attributable to the City of Dothan shown in this report on the same page?

A. Twenty-two million, three hundred eighty-nine thousand, seven hundred eighty dollars.

Q. Will you show the industrial exemptions attributable to the City of Dothan for industries which have moved in there shown on this same page?

A. Two hundred nine thousand, eight hundred fifty dollars.

Q. What industrial exemptions are shown for the rest—the entire rest of the County outside of Dothan on that report?

A. This?

Q. No; here it is, industrial exemptions, six thousand—

A. Six thousand dollars in Ashford.

Q. So out of two hundred nine thousand, eight hundred fifty, industrial exemptions, six thousand came from outside of the City of Dothan in Houston County as shown by this report?

A. Correct.

Q. Judge, I show you here what purports to be a statement of the financial condition and operating expenses of Houston County, Alabama, for the period of October 1, 1964, through September 30, 1965, with a certificate thereon signed by Carl E. Sellers, Judge of Probate, the 25th of October, 1965, and ask you if you recognize this financial statement?

A. I do.

[fol. 130] Q. Is this the financial statement which was duly published as required by law in a newspaper in Dothan, Alabama, on November 5, 1965?

A. That is true.

Q. It shows here on this under the Operating Statement of General Funds that the fees and commissions—strike that. I will ask you what happens to the Privilege License Taxes that are collected by Houston County by—through your office each year?

A. What is disbursed—I don't know just exactly the breakdown on that, Mr. Lewis.

Q. They are disbursed how?

A. I mean whatever—wherever—whatever channel they are supposed to be channeled into, that is where they go.

Q. Judge, don't you know that except where the—where there is a State license, such as doctors and lawyers and dentists, and maybe a few others which specifically license those individuals or fix the amount of the individual license, and the County has no license attributable to them—to them, that this license revenue is split fifty-fifty between County and State of Alabama?

A. And the State.

Q. That is generally the case, is it not?

A. I believe that's right.

Q. And you show here forty-nine thousand, seven hundred thirty-two eighty-two from Privilege License and the Forestry and Severance Tax as income shown on this—

[fol. 131] A. Right.

Q. —on this operating statement?

A. Uh, huh.

Q. And practically all of that is Privilege License tax, isn't it?

A. I would think so.

Q. Where does that money the County gets go, Judge, in the general fund?

A. Into the general fund.

Q. General County fund?

A. Right.

Q. Doesn't go to the City, does it?

A. No.

Q. But it is collected from the citizens and residents of the City, isn't it, of the City of Dothan?

A. That's right.

Q. All right, sir. Now, the net income from your office of Fees and Commissions—strike that net—the income shown here in this operating statement of Fees and Commissions of Judge of Probate, sixty-eight thousand, three hundred fifty-two dollars and seventy-six cents—

A. That is correct.

Q. —is that the gross amount you collected there?

A. That is—that is what the record shows.

Q. Judge, would you give the Court the benefit of your judgment as to what percentage of those fees were gotten [fol. 132] from or received from citizens of the City of Dothan as compared with the whole County?

A. I wouldn't know what percentage, Mr. Lewis—

Q. Well, couldn't you—

A. —but naturally, I would say Dothan being the largest municipality and the most largest group of people living there, would more or less come out of the City of Dothan.

Q. Great—the largest percentage would be from the City of Dothan, would it, Judge?

A. I would think so.

Q. Real estate transactions and things like that?

A. I would think so.

Q. Now, this shows, Judge, a total—the report doesn't show, but I have added this up, and if you will, check me, please, a hundred and twenty-nine thousand, two hundred fifty-eight dollars and forty-three cents received by your office from Fees and Commissions, Deed and Mortgage Tax, and Privilege Tax and Forestry Severance Tax; now, the Deed and Mortgage—

A. Mineral Rights.

Q. Mineral Rights, twenty-eight dollars and thirty-three cents?

A. That's right.

Q. Over here on this next page of this financial report it shows expenses of the Probate Judge's office, forty-two

thousand, two hundred fifty-two dollars, eighteen cents; is that right?

A. Yes, sir.

[fol. 133] Q. Total?

A. Correct.

Q. That leaves a net income from your office, now, the Judge of Probate office, there in Houston County, I believe —check me now, Judge—eighty-seven thousand, six dollars, twenty-five cents; is that about right? If you will, check it, please.

A. That is correct.

Q. Right here, Judge, right here it is, forty-two thousand, two fifty-two eighteen; that is your expenses right there—

A. Uh, huh.

Q. —and I deducted that.

A. Come off of that.

Q. That is taking that forty-two thousand, two fifty-two eighteen, that leaves eighty-seven thousand, six twenty-five?

A. Correct.

Q. Subject to mathematical error?

A. (Nodded to indicate affirmative reply)

Q. Eighty-seven thousand, six dollars, twenty-five cents; where does that money go, Judge?

A. General fund.

Q. That goes to the general fund of Houston County, doesn't it?

A. Yes.

Q. Here we have the Tax Collector, Ad Valorem Taxes, a hundred forty-nine thousand, nine hundred thirty-two dollars, sixteen cents; I believe that is correct, isn't it?

[fol. 134] A. Yes, sir.

Q. Shown under the same Operating Statement of General Fund?

A. That's right.

Q. Where does that go, Judge?

A. General fund.

Q. So that if you figured the approximate percentage—

A. Now, our Tax Collector—I say it doesn't all go in the general fund there, either; what the Tax Collector collects goes into the various funds, the two and a half mill and all that, see, he has to divide that down and break it down.

Q. Where does the two and a half mill fund go, Judge?

A. It goes in what—is misnomer, it goes into what is called the Road and Bridge Fund, which is for the maintenance of buildings and so forth, as spelled out in Title 12, 12.

Q. Uh, huh; and—but it all goes to the general use of the County, doesn't it?

A. General use of the County.

Q. Doesn't go to the City of—City of Dothan, does it, now?

A. Oh, no.

Q. Have you figured out the percentage, Judge, of the Ad Valorem Tax assessment on property in the City of Dothan as compared with the total Ad Valorem Tax assessments for Houston County that you have just testified about, that thirty-one million?

A. I haven't figured it out; no, sir.

Q. Roughly, figures around seventy per cent attributable [fol. 135] to the City of Dothan, doesn't it, Judge?

A. That is what has been—.

Q. Subject to mathematical—

A. —what has been indicated.

Q. —subject to mathematical figures, so this general fund here, wouldn't it be fair to say that approximately seventy per cent of this money was collected from residents of the City of Dothan by your office?

A. Well, if seventy per cent—

Q. Approximately?

A. —seventy per cent of the people live in Dothan, it couldn't be otherwise.

Q. Yes, sir; isn't the lion's share of the industries and businesses and commercial transactions in the City of Dothan?

A. That is true.

Q. And not in Houston County, I mean in—outside of the City of Dothan?

A. That's right.

Q. Wouldn't that be a fair statement then, Judge, in your opinion?

A. I would—I guess so.

Q. Now, Judge, you—you heard me ask Mr. Harvey Hicks—I believe you were in the court room here during the taking of Mr. Hicks' testimony?

A. Yes, I was.

Q. You heard me ask Mr. Harvey Hicks if he would [fol. 136] agree with Mr. Horace Adams, the Assistant Engineer for the Houston County, if he stated that he—in his judgment no more than five per cent of the—of the funds of Houston County which were devoted to the construction and maintenance of public roads was spent by the County on roads or streets—public roads or streets in the corporate limits of the City of Dothan, didn't you?

A. I heard that.

Q. Would your judgment be the same, Judge?

A. Well, not—

Q. Approximately?

A. Not handling the records, I would have to go along with the Assistant Engineer's estimate.

Q. Well, you know, Judge, don't you, that the—that—strike that. Do you have a judgment as to about how many miles of public roads there are in Houston County?

A. It has been stated about eleven hundred miles.

Q. Well, in your judgment, is that fair?

A. I think that is a fair estimate.

Q. Could you give this Court the benefit of your judgment as to how many miles the City—of public roads in the City of Dothan that the Houston County maintains or has maintained in the past several years?

A. I couldn't give an estimate.

Q. It would be very small compared with the County roads, would it not, Judge?

[fol. 137] A. County wide, I would say it would; yes.

Q. Very small?

A. Yes.

Q. Now, Judge, you heard Mr. Hicks testify that approximately eighty-five to ninety-five—ninety per cent of —of his time was spent, and of the time of the members of the Board of Revenue, were spent on—with reference to the construction and maintenance of roads, did you?

A. Yes, sir.

Q. You don't know how much time these various Commissioners spend outside of your sight, do you, or on what?

A. No, I do not.

Q. Except it is generally known that that is a major concern—

A. Yes.

Q. —of the Board of Revenue and Control members?

A. (Nodded to indicate affirmative reply)

Q. Judge, the Board of Revenue and Control has the power of eminent domain, condemnation power, doesn't it?

A. Yes, sir.

Q. And before it—before Houston County can go in and construct a road, if it can't obtain an easement by agreement, it has got to go in and condemn that property, has it not?

A. True.

Q. How do you institute that—strike that. The Board of Revenue and Control of Houston County has to pass a [fol. 138] resolution authorizing specifically that condemnation proceeding, does it not?

A. That is true.

Q. Before it can be instituted; and that is the taking of private property for public purpose against the consent of the owner, isn't it?

A. Correct.

Q. Do you know of any higher legislative authority than that?

A. (Shook head to indicate negative reply)

Mr. Godbold: We object to that.

Judge Gewin: Sustained; I think we judicially know all of that; they have to proceed in that manner to condemn.

Q. Judge, in the past several years, can you conscientiously tell this Court that the City of Dothan has been fairly treated by the Board of Revenue and Control in matters of public road construction?

A. Have they been what, now; will you state it—

Mr. Lewis: Read the question to him, please, sir.

(Question read by court reporter)

A. Well, as has been testified, they have worked in a cooperative way always, and the district—

Q. Judge, I just asked you that question, please, sir; if you will, answer it?

A. I believe they have been fairly treated, because—

Q. You can conscientiously state that?

[fol. 139] A. —they have worked with them on every request.

Q. They worked with them?

A. Yes, sir.

Q. That didn't say that they treated them fairly, Judge, did it?

A. I—I couldn't say fairly, I wouldn't be—

Q. You couldn't say as to the fairness?

A. I wouldn't be the judge on that; I wouldn't—I wouldn't—

Q. Now, Judge, how about—how about those streets—how about Dexter Avenue, Highland Avenue, and Hedstrom Road; the City of Dothan has requested that those be hardtopped or blacktopped, hard surfaced, in the past six months, hasn't it?

A. I remember the names, yes; I wouldn't know unless I had the minutes of that.

Q. What action was taken on those requests, Judge?

A. Many of these, they have ones, I believe, that they tabled action because the District 5 Commissioner was out of town, and the other times, though, I believe that they

have been acted on there and agreed to work with the City on most—

Q. Judge, don't you know—

A. Unless I had the minutes, I could not—I don't memorize all these things.

Q. Now, you testified that in your opinion the City of Dothan has been fairly treated in these matters; don't you know the requests in these three cases have been tabled or pigeonholed by the Board of Revenue?

[fol. 140] A. That was until the Commissioner could get back, is it not; doesn't that show in there, until Mr. Davis could get back?

Q. I ask you, Judge, if you didn't—if those requests weren't pigeonholed—

Mr. Parnell S. Lewis: Three months, at least, approximately.

Q. —over three months ago?

A. On these particular streets, there has been several requests, Mr. Lewis, and I don't remember them all, what was the name of what street and when it was asked for, but they have asked.

Q. Yes, but I—

A. They have asked for several, I grant you that, but I wouldn't know which unless I had the minutes to go back and see which ones was which.

Q. Judge, how can you testify the City has been fairly treated in these matters if you can't recall these things?

A. You have the minutes there?

Judge Gewin: Mr. Lewis, let's try to avoid arguing with the witness.

A. It is a matter of record; it is a matter of record, it is not a matter of me memorizing and remembering all that.

Mr. Lewis: I will proceed, Judge.

Judge Gewin: Let's get on, now, with our direct questions, I don't know that—did you excuse him?

Mr. Lewis: No, sir; no, sir.

[fol. 141] Judge Gewin: Let's try to come on down to the issues. Don't want to cut you off, but I believe we are going over the same thing, maybe doing a little arguing.

Q. Judge, when—when all of this publicity arose in April and May of 1965 concerning the letter—the two letters written by the Mayor of the—of the City of Dothan, Plaintiff Earle C. Moody in this case, to the—Senator Charles H. Adams and Representative Robert J. Stembridge, from Houston County, Alabama, on April 27, 1965, did you or any member of the Board of Revenue and Control of Houston County, Alabama, take any action whatever to obtain any reapportionment or any—any reapportionment of the—of the Board of Revenue and Control of Houston County, Alabama?

A. They—as was said, the two bodies met, and they tried to come to some agreement on realigning some of the beat boundaries, you might say, or something like that, but *nothing was ever agreed, nothing* ever came out of these discussions and meetings.

Q. Judge, I didn't ask you that; I say did you take any action—

A. I did not.

Q. —to attempt to—

A. I usually act—

Q. —remedy this malapportionment situation?

A. I did not.

Q. Did any of the members of that Board of Revenue and Control, to your knowledge, take any such action, either?

[fol. 142] A. Nothing official.

Q. Do you know of any unofficial action they took, Judge?

A. I do not.

Q. To obtain any redress of that malapportionment situation?

A. (Shook head to indicate negative reply)

Q. Judge, the Board of Revenue and Control doesn't—is not required by law to levy taxes thereon on the citizens of Houston County, Alabama, are they?

A. Yes, sir; if you going to operate.

Q. I didn't—I say the law doesn't require you to do it; you do that of your discretion, do you not?

A. Well, the Board of Revenue doesn't levy any taxes; they pass the resolution.

Q. Well, what does that constitute?

A. They—well, I say they don't levy; they adopt this each year, they do adopt the tax levy that is enacted by the Legislature, you know, it is voted on by the people; they don't levy, they don't put on any taxes.

Q. People don't vote this levy, this tax?

Judge Gewin: We understand how the resolution is passed, I think.

A. That is what I am—

Judge Gewin: We understand that.

A. That is what he is trying to bring out.

Judge Gewin: Let's go to something else.

[fol. 143] Q. Two and a half road and bridge mills, doesn't that result in about fifty thousand dollars of revenue to Houston County, Alabama, out of the City of Dothan tax assessed property?

A. I don't know the figure unless we had—

Q. Well, it would be two and a half mills, roughly, by twenty-two million assessed valuation?

A. That is around fifty thousand, round figure, there.

Q. That goes into the general fund of the County, does it not?

A. The two and a-half mill doesn't; it goes into the road and bridge fund; it is a misnomer, but that is for the upkeep of buildings and so forth.

Q. That is for miscellaneous use?

A. Correct.

Q. That is—for all intents and purposes that is the general fund accounting, isn't it?

A. That's right.

Mr. Lewis: Excuse me, please. That's all, your honor.
Mr. Godbold: Judge, I have got four questions.
Judge Gewin: Mr. Madison, I think, may wish to ask.
Mr. Godbold: I beg your pardon.
Judge Gewin: You wish to ask yours now, Mr. Madison?
Mr. Madison: Yes, sir; thank you, your honor.

Redirect examination.

By Mr. Madison:

Q. Judge, the 1960 Census is stated to be for the—for the [fol. 144] City of Dothan to be thirty-one thousand, four hundred forty, and that is known as Beat 5, as I understand it; is that correct?

A. District 5.

Q. District 5?

A. City of Dothan.

Q. District 5; now, the four other districts, have you had occasion to go into those districts, either in political campaigns or in connection with your duties as Probate Judge or otherwise?

A. I have.

Q. How many; over how many times or what period of time, I might say?

A. Well—

Q. How long you been Probate Judge?

A. I been there seven years.

Q. Seven years; do your duties of office carry you into those districts?

A. Very often.

Q. Very often; are you able to formulate some judgment as to the population of the different districts other than Dothan?

A. Well, offhand, my mind, I don't know.

Q. I know this is not exact, but asked you to give some judgment?

A. I mean, we have a matter of record; I mean we have records to—

Q. I am not talking about the qualified voters now, I'm speaking of the population—

A. The population.

[fol. 145] Q. —can you give some judgment about it?

A. No, sir; I don't—I don't know.

Q. When you take out the City of Dothan and leave some—

A. That was thirty-one.

Q. Against fifty thousand, seven hundred eighteen for that total County?

A. I would say in round figures about nineteen thousand, then, in the County.

Q. All right; do you know whether or not those beats other than Dothan are substantially the same in population?

A. I presume that they are.

Q. Well, now, would that be—

Mr. Godbold: Objection.

A. No, that may be—some one particular section may be a little more thickly populated than the other.

Q. How much more; have you got any judgment on how much?

A. No, sir.

Mr. Madison: That's all.

By Mr. Godbold:

Q. Judge, Mr. Lewis asked you in some detail about these receipts of funds by your office and the disbursement thereof; are all of those fees that are collected by your office and the disbursement thereof established by State statute?

A. Yes, sir.

Q. He asked you whether the Board of Revenue and Con-

[fol. 146] trol in this discussion in meetings that took place

had taken any action with a regard to reapportionment; does the Board of Revenue and Control have any authority to reapportion itself?

A. I—

Mr. Lewis: Object.

Judge Gewin: We know as a matter of law it could not; we understand that.

Q. All right; now, the two legislators that are referred to here as the recipients of letters demanding that they seek reapportionment in the Legislature, do those two legislators run State wide, Mr. —County wide, Mr. Stembridge and Mr. Adams?

A. They do.

Q. Do you also run County wide?

A. I do.

Mr. Godbold: No further questions.

Judge Gewin: Anything further for this witness?

Mr. Lewis: Your honor, I would like to ask just a couple of more questions.

Judge Gewin: Just a couple?

Mr. Lewis: Yes, sir.

Recross examination.

By Mr. Lewis:

Q. How long have you been Judge of Probate of Houston County, Alabama, and as such Chairman of the Board of Revenue and Control?

A. Since January, 1959.

[fol. 147] Q. How many times have you had occasion to vote on any issue brought before that Board of Revenue and Control in the past seven years?

A. I believe one time.

Q. One time, and that was on a firing of an employee, was it not?

A. I believe that is correct.

Mr. Lewis: That's all.

Judge Gewin: Anything further? You may come down, Judge Sellers. Proceed, gentlemen.

Mr. Godbold: The defense rests, your honor.

Judge Gewin: Defense has rested. Is there anything for the plaintiffs?

Mr. Lewis: Your honor, would you give me just a couple of minutes, please? Take the stand. Did you swear—you weren't sworn, were you?

Witness Parnell Lewis: No.

Mr. Lewis: Mr. Clerk, will you swear the witness, please.

The Clerk: Do you solemnly swear that the testimony you give in this cause to be the truth, the whole truth, and nothing but the truth, so help you, God?

Witness Parnell Lewis: I do.

[fol. 148] PARNELL LEWIS, a Plaintiff (860-S), having been duly sworn, testified in rebuttal as follows:

Direct examination.

By Mr. Lewis:

Q. For the record please state your name, age, and present residence address?

A. Parnell Lewis, forty-seven, Dothan, Alabama.

Q. Are you one of the plaintiffs in this case?

A. I am.

Q. Mr. Lewis, are you a member of the Board of Revenue—Board of Commissioners of the City of Dothan?

A. I am.

Q. When were you—when did you take office as such?

A. In October of '65.

Q. You have heard the testimony concerning the two letters that were written by the plaintiff, Earle C. Moody, as Mayor of the City of Dothan, Alabama, to the Honorable Robert J. Stembridge, the Representative from Houston

County in the House of Representatives, Legislature of Alabama, dated—

Judge Gewin: And to Senator Adams; we are familiar with the Legislature evidence.

Q. You heard that, didn't you?

A. Yes, sir.

Q. I will ask you whether or not you took any action, yourself, with reference to—to any kind of dealings with [fol. 149] the Board of Revenue and Control of Houston County, Alabama, or others in your presence, in an attempt to secure proportionate representation for the City of Dothan on the Board of Revenue and Control of Houston County, Alabama, based on the—roughly on the percentage of the population of the City of Dothan bore to the total population of Houston County?

A. I attended three such meetings; the first one was 1st day of January, this year, and three of the County Commissioners were present, and we reviewed the whole situation as to population and the amount of tax paid in, and realized that we had a real problem, and our efforts were bent toward the end of coming to some equitable solution to the inequities as they existed.

Q. With reference to what?

A. With reference to the County's representation on County Board of Revenue. The second meeting was attended by all of the Board of Revenue, with the exception of Mr. Calhoun, and all the City Commissioners and Mr. Hardwick—

Q. For the City of Dothan?

A. All the City Commissioners of the City of Dothan, Mr. Hardwick, and I believe Mr. Segrest, and at that time we sought to come up with some equitable plan so the City and the County would not be at odds with each other and the citizens at odds with each other.

Q. You mean specifically with reference to representation on the governing body of Houston County?

[fol. 150] A. Representation—that is correct; all these meetings were in reference to that, and various gerryman-

dering or whatever you want to call it; efforts were made, and they were honest efforts, to try and work this thing out.

Q. Was there any agreement ever reached?

A. Nothing—

Q. With reference to it?

A. Nothing—nothing was jelled on it, and subsequently we had one more meeting, which bore no fruit, and then in one last effort I called Judge Sellers and told him that the time was running short, and that if he would please come up with a plan which would be satisfactory to the County Commissioners and be equitable as far as the City Commission was concerned, that we would appreciate it very much, and I haven't heard from him since then.

Q. What was the verb—did the members of the Board of County Commissioners, Board of Revenue and Control of Houston County, verbally express in those meetings their position with reference to increasing the representation of the City of Dothan on that Board of Revenue and Control?

A. Yes, there were all sorts of—there were different suggestions and recommendations and discussions about running at large or making fewer districts, or we just explored the whole thing in an effort to—

Q. Were they willing to give up their four to one ad- [fol. 151] vantage over the City of Dothan on the Board of Revenue and Control?

A. Well, apparently not; they offered no solution.

Q. They didn't agree to it?

A. That's right.

Q. To changes?

Mr. Lewis: That's all.

Judge Gewin: Any questions.

Cross examination.

By Mr. Godbold:

Q. Mr. Lewis, all these meetings took place after this suit was filed, didn't they?

A. Yes, sir.

Mr. Godbold: No further questions.

Mr. Lewis: Wait just a minute.

Redirect examination.

By Mr. Lewis:

Q. But wasn't there public discussion for months and months prior to the filing of this suit and subsequent to April 27 of 1965 with reference to the fact that the Board of Revenue and Control of Houston County, Alabama, was composed of four members, none of whom could be residents of the City of Dothan, and only one from the City of Dothan?

A. Yes, sir; as a matter of fact, I discussed it with Mr. Robert Stembridge, the Houston County Representative.

Q. That is all right; he is not here.

[fol. 152] A. Well, that was prior to the filing of the suit.

Mr. Lewis: That's all; that's all.

Judge Gewin: Any further questions.

Mr. Godbold: No questions.

Mr. Lewis: No questions.

Judge Gewin: Anything further from the plaintiffs?

Mr. Lewis: Plaintiffs rest, your honor.

Judge Gewin: You rest and submit your case to us then. The defendants have anything?

Mr. Godbold: Nothing further from the defendants, your honor.

Judge Gewin: When do you gentlemen—how long do you want to file the briefs now?

Mr. Godbold: Defendants will request a week, your honor.

Judge Gewin: The plaintiffs, how long do you need; do you wish to file a brief?

Mr. Lewis: Five days; let's see, will that include this week end, it will be—

Judge Gewin: Five days starting with today, right now; how long is that?

Mr. Hobbs: Start right now.

Mr. Godbold: I think he's decided seven now, your honor.

Judge Gewin: Seven days will be allowed.

[fol. 153] Mr. Lewis: By next Friday, your honor please?

Judge Gewin: How is that, sir?

Mr. Lewis: By next Friday, that would be?

Judge Gewin: I am not going to figure out how long seven days is from now; we will give you seven days.

Mr. Godbold: All right, sir.

Judge Gewin: And we will take the case under submission and await your briefs and try to decide it as soon as we can after that. Mr. Madison?

Mr. Madison: Your honor, will the Court take one brief from us in both cases, the dual position we take?

Judge Gewin: Yes, sir; happy to do so. Court will adjourn.

• • • • • • •

[fol. 154]

PLAINTIFFS' EXHIBIT No. 5

RESOLUTION No. 3220

WHEREAS, under the provisions of Act No. 9, Acts of the Legislature of Alabama, Regular Session of 1957, Vol. 1, Page 30, et seq., a Board of Revenue and Control for Houston County, Alabama, was established, said Act providing for said Board of Revenue and Control to be composed of five district Commissioners, with the Judge of Probate of Houston County, Alabama, to serve as ex officio chairman thereof; and,

WHEREAS, said Act No. 9 provides that Houston County, Alabama, be divided into five Board of Revenue and Control districts, as follows: District No. 1 shall embrace and be composed of Beats No. 1, 2 and 4; District No. 2 shall embrace and be composed of Beats No. 5, 6, 7 and 11; District No. 3 shall embrace and be composed of Beats No. 10, 12 and 14; District No. 4 shall embrace and be composed of Beats No. 8, 9 and 13; and District No. 5 shall embrace and be composed of Beat No. 3; and,

WHEREAS, the corporate limits of the City of Dothan, Alabama, and the boundaries of aforesaid District No. 5 and Beat No. 3 are identical; and,

WHEREAS, the official list of qualified electors in Houston County, Alabama, for 1960, as prepared by the Judge of Probate of said County shows the aggregate number of qualified electors in beats comprising aforesaid five Board of Revenue and Control Districts to be as follows: District No. 1, 1,224; District No. 2, 1,722; District No. 3, 1,450; District No. 4, 1,368; District No. 5, 9,046; and,

WHEREAS, pursuant to the provisions of Act No. 386 of the Legislature of Alabama, Regular Session of 1953, Vol. 1, Page 457 et seq., the board of registrars purged the list of the registered electors of Houston County of the

[fol. 155] names of all deceased, non-resident and otherwise disqualified electors in said County, so that the official list of qualified electors in Houston County, Alabama, for 1964, as prepared by the Judge of Probate of said County shows the aggregate number of qualified electors in the beats comprising aforesaid five Board of Revenue and Control Districts to be as follows: District No. 1, 1,098; District No. 2, 1,356; District No. 3, 1,232; District No. 4, 1,168; District No. 5, 7,920; and,

WHEREAS, according to the 1960 official United States Census the total population of Houston County, Alabama, was 50,718 and the total population of said City of Dothan was 31,440, said population of said City of Dothan comprising approximately 61% of the total population of said Houston County; and,

WHEREAS, according to the records in the office of the Tax Assessor of Houston County, Alabama, the total assessed value of property in said County for ad valorem taxes in 1965 amounted to $30,621,030.00 and that $21,217,120.00 of such value represented property located within the said City of Dothan, being approximately 69% of said total assessed value of said property in Houston County, Alabama; and,

WHEREAS, said Board of Revenue and Control is the governing body of Houston County, Alabama, with broad governing powers granted it by the laws of the State of Alabama, including the power to tax and the power to spend tax monies paid by the residents and qualified electors of the City of Dothan; and said Board of Revenue and Control does spend practically all of said tax monies in Houston County, Alabama, outside of the corporate limits of the City of Dothan; and,

WHEREAS, under aforesaid Act No. 9, Acts of the Legislature of Alabama, Regular Session of 1957, the residents [fol. 156] and qualified electors of the City of Dothan are represented by only one Commissioner on aforesaid Board

of Revenue and Control which is composed of five Commissioners; and,

WHEREAS, the Honorable Earle C. Moody, as Mayor of the City of Dothan, Alabama, on April 27, 1965, prior to the convening of the 1965 Regular Session of the Legislature of the State of Alabama, wrote a letter to Honorable Charles H. Adams, the Senator of Houston County, Alabama, in said Legislature, a copy of which letter is attached to this Resolution and made a part hereof as exhibit 1 hereto, and wrote a similar letter on April 27, 1965, to Honorable Robert J. Stembridge, the Representative of Houston County, Alabama, in said Legislature, a copy of which letter is attached to this Resolution and made a part hereof as exhibit 2 hereto, and a copy of each of said letters was duly mailed to Honorable James B. Allen, Lieutenant Governor of the State of Alabama and presiding officer of the Senate of Alabama, Mrs. Agnes Baggett, Secretary of State of the State of Alabama, and Honorable Albert P. Brewer, Speaker of the House of Representatives of the Legislature of Alabama; and

WHEREAS, no action requested in aforesaid letters, exhibits 1 and 2 hereto, was taken at said 1965 Regular Session of the Legislature of Alabama, and said Legislature has heretofore met in Special Session after said Regular Session of 1965 adjourned, but no such action was taken in said Special Session.

BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE CITY OF DOTHAN, ALABAMA, IN REGULAR SESSION ASSEMBLED, AS FOLLOWS:

Section One: That this Board of Commissioners finds the foregoing recitation of facts to be substantially true and [fol. 157] correct.

Section Two: That the qualified electors and taxpayers residing within the City of Dothan are denied the right to equal suffrage and to equal representation on the Board of Revenue and Control of Houston County, Alabama, to which they are entitled under the provisions of the Constitution of Alabama of 1901, and are denied the equal protection of the laws under the Fourteenth Amendment to the Constitution of the United States of America.

Section Three: That the City Attorney of the City of Dothan, Alabama, be and he is hereby authorized, empowered and directed to take such legal action and to file and prosecute to conclusion such legal proceedings and actions as he shall deem necessary in order to obtain the fair and equal representation of the qualified electors and residents of the City of Dothan to which they are entitled under the provisions of the Constitution of Alabama and of the Constitution of the United States of America on the Governing Body of Houston County, Alabama, presently known as the Board of Revenue and Control of Houston County, Alabama; and that such legal action and proceedings shall be instituted in the names of Earle C. Moody, as Mayor of the City of Dothan, Alabama, and individually as a qualified elector and taxpayer of the City of Dothan and of Houston County, Alabama; Parnell S. Lewis, as a member of the Board of Commissioners of the City of Dothan, Alabama, and individually as a qualified elector and taxpayer of said City of Dothan and Houston County, Alabama; and James P. Hall, as a member of the Board of Commissioners of the City of Dothan, Alabama, and individually as a qualified elector and taxpayer of the City of Dothan, and of Houston County, Alabama.

PASSED, ADOPTED AND APPROVED this 23 day of November, 1965.

/s/ EARLE C. MOODY
President (Mayor)

[fol. 158]

/s/ JAMES P. HALL
Associate Commissioner

/s/ P. S. LEWIS
Associate Commissioner

BOARD OF CITY COMMISSIONERS

Attest:

/s/ L. R. DRIGGERS
City Clerk

I, L. R. Driggers, hereby certify that I am Clerk-Treasurer of the City of Dothan, Alabama, and as such I am the official custodian of the records of said City, including records of resolutions and ordinances passed and adopted by the Board of Commissioners of said City, and that the foregoing Resolution No. 3220 is a true and correct copy of said resolution which was duly passed and adopted by said Board of Commissioners at regular meeting held on November 23, 1965, as the same appears of record in the Office of the City Clerk-Treasurer in Ordinance Book 20, Page 168.

Witness my hand and the official seal of said City this 6th day of April, 1966.

/s/ L. R. DRIGGERS
City Clerk-Treasurer

(Seal)

[fol. 159]

PLAINTIFFS' EXHIBIT No. 6

OFFICIAL LIST OF QUALIFIED VOTERS AS OF APRIL 1, 1966 FOR HOUSTON COUNTY, ALA.

		TOTAL
BEAT 1—DISTRICT 1		
MALE	221	406
FEMALE	185	
BEAT 1—DISTRICT 2		
MALE	71	134
FEMALE	63	
BEAT 2		
MALE	160	282
FEMALE	122	
BEAT 4—DISTRICT 1		
MALE	153	278
FEMALE	125	
BEAT 4—DISTRICT 2		
MALE	266	469
FEMALE	203	
BEAT 5		
MALE	184	309
FEMALE	125	
BEAT 6		
MALE	507	892
FEMALE	385	
BEAT 7		
MALE	321	537
FEMALE	216	
BEAT 8—DISTRICT 1		
MALE	241	414
FEMALE	173	

BEAT 8—DISTRICT 2		
MALE	203	389
FEMALE	186	
BEAT 9		
MALE	129	243
FEMALE	114	
BEAT 10		
MALE	611	1180
FEMALE	569	
BEAT 11—DISTRICT 1		
MALE	94	163
FEMALE	69	
BEAT 11—DISTRICT 2		
MALE	78	130
FEMALE	52	

[fol. 160]

BEAT 12—DISTRICT 1		TOTAL
MALE	137	257
FEMALE	120	
BEAT 12—DISTRICT 2		
MALE	97	176
FEMALE	79	
BEAT 13		
MALE	291	590
FEMALE	299	
BEAT 14		
MALE	86	163
FEMALE	77	
(COUNTY) Sub-Total		7,012

(CITY OF DOTHAN)

BEAT 3—WARD 1		TOTAL
MALE	851	1720
FEMALE	869	

BEAT 3—WARD 2		
MALE	1556	2903
FEMALE	1347	
BEAT 3—WARD 3		
MALE	1845	3662
FEMALE	1817	
BEAT 3—WARD 4		
MALE	1887	3893
FEMALE	2006	
	(CITY) Sub-Total	12,178
	(CITY & COUNTY) Grand Total	19,190

/s/ Carl E. Sellers
Judge of Probate, Houston County, Ala.

[fol. 161]

Defendant's Exhibit No. 1

Excerpts From the Minutes of the Regular Meeting of the Board of Revenue and Control of Houston County, Alabama, Held on March 28, 1966, at the Courthouse, Dothan, Alabama.

State of Alabama

Houston County

The Board of Revenue and Control of Houston County, Alabama, met in regular session at the County Courthouse in Dothan, Alabama, on March 28, 1966, at 2:00 O'clock P.M. The following members of the Board were present: J. W. Calhoun, W. H. Hicks, W. E. Yance and W. G. Bond. Absent: J. B. Davis.

Carl E. Sellers presided as Chairman of the meeting, and a quorum being present, the meeting opened for busi-

ness. Miss Frankie Lamb was present and acted as secretary.

W. H. Hicks made a motion, seconded by J. W. Calhoun, and unanimously carried, to adopt the tax levy for the year beginning October 1, 1965 and ending September 30, 1966.

RESOLUTION

RESOLVED, that a special tax of 25 cents on the One Hundred ($100.00) Dollars, of the assessed valuation of the property in Houston County, is hereby levied and ordered to be collected for the erection, construction or maintenance of the necessary public building, bridges, or incurred for the erection of public roads since the 28th day of November 1901, or that may be hereafter created for the erection, construction, or maintenance of public buildings, bridges or roads, for the tax year October 1, 1965, to September 30, 1966.

RESOLVED, that a tax of 50 cents on the One Hundred ($100.00) Dollars of the assessed valuation property in Houston County be and the same is hereby levied for general purpose for the tax year October 1, 1965, to September 30, 1966.

RESOLVED, that a special school tax of 40 cents on the One Hundred ($100.00) Dollars of the assessed valuation of property in Houston County to be applied for school purposes is hereby levied and ordered to be collected for the year October 1, 1965, to September 30, 1966.

RESOLVED, that a special county tax of 40 cents on the One Hundred ($100.00) Dollars of the assessed valuation of property in Houston County to be applied for public hospital purposes is hereby levied and ordered to be collected for the tax year October 1, 1965, to September 30, 1966.

RESOLVED, FURTHER, that the tax of 25 cents on the One Hundred ($100.00) Dollars worth of property levied, collected, and derived by Houston County under Section 215

(a) of the Constitution of Alabama of 1901 be and the same is hereby ordered to be set aside by the County Depository into and as a separate fund to be known as the Road and Bridge and Public Building Fund, separate and apart from the Current Expense Fund.

[fol. 162] RESOLVED, that a special tax of 30 cents on the One Hundred ($100.00) Dollars of the assessed valuation of property in Houston County to be levied annually in Houston County for public school purposes within said County as provided by Article 19, known as the special school tax amendment, or the Constitution of Alabama, for a period of Twenty (20) years beginning October 1, 1957. Approved by vote of November 2, 1954, found in Minute Book 9, Page 281.

HOUSTON COUNTY BOARD OF REVENUE AND CONTROL

By: /s/ CARL E. SELLERS, Chairman

By: /s/ J. W. CALHOUN

By: /s/ W. H. HICKS

By: /s/ W. E. YANCE

By: /s/ W. G. BOND

I, Frankie Lamb, hereby certify that I am the Clerk of the Board of Revenue and Control of Houston County, a Political Subdivision of the State of Alabama, and as such I am the official custodian of the books and records of said Board of Revenue and Control, and that the foregoing is a true, correct and compared copy of a certain resolution passed and adopted by said Board of Revenue and Control on the 28th day of March, 1966, as the same appears of record in the office of the Board of Revenue and Control of said County in Minute Book No. 15 at Page 361 in the said records which are under my custody and are under my control.

Witness my hand and the official seal of the Board of Revenue and Control of Houston County, Alabama, on this the 6th day of April, 1966.

/s/ Frankie Lamb
Clerk

SEAL

[fol. 163]

Excerpts From the Minutes of the Regular Meeting of the Board of Revenue and Control of Houston County, Alabama, Held on February 10, 1964, at the Courthouse, Dothan, Alabama.

State of Alabama

Houston County

The Board of Revenue and Control of Houston County, Alabama, met in regular session at the County Courthouse in Dothan, Alabama, on February 10, 1964, at 2:00 O'Clock P.M. The following members of the Board were present: J. B. Davis, W. G. Bond, W. E. Yance and W. H. Hicks. Absent: None.

Carl E. Sellers presided as Chairman of the meeting, and a quorum being present, the meeting opened for business. Miss Frankie Lamb was present and acted as secretary.

J. B. Davis made a motion, seconded by W. G. Bond, and unanimously carried, that the resolution as to the Tax Levy for the year beginning October 1, 1963 and ending September 30, 1964 be signed and adopted.

Resolution

Resolved, that a special tax of 25 cents on the One Hundred ($100.00) Dollars, of the assessed valuation of the property in Houston County, is hereby levied and ordered to be collected for the erection, construction, or maintenance of the necessary public buildings, bridges, or incurred for the erection of public roads since the 28th of November 1901, or that may be hereafter created for the

erection, construction, or maintenance of public buildings, bridges or roads, for the tax year October 1, 1963, to September 30, 1964.

RESOLVED, that a tax of 50 cents on the One Hundred ($100.00) Dollars of the assessed valuation property in Houston County be and the same is hereby levied for general purpose for the tax year October 1, 1963, to September 30, 1964.

RESOLVED, that a special school tax of 40 cents on the One Hundred ($100.00) Dollars of the assessed valuation of property in Houston County to be applied for school purposes is hereby levied and ordered to be collected for the year October 1, 1963, to September 30, 1964.

RESOLVED, that a special county tax of 40 cents on the One Hundred ($100.00) Dollars of the assessed valuation of property in Houston County to be applied for public hospital purposes is hereby levied and ordered to be collected for the tax year October 1, 1963, to September 30, 1964.

RESOLVED FURTHER, that the tax of 25 cents on the One Hundred ($100.00) Dollars worth of property levied, collected and derived by Houston County under Section 215 (a) of the Constitution of Alabama of 1901 be and the same is hereby ordered to be set aside by the County Depository into and as a separate fund to be known as the Road and Bridge and Public Building Fund, separate and apart from the Current Expense Fund.

[fol. 164] RESOLVED, that a special tax of 30 cents on the One Hundred ($100.00) Dollars of the assessed valuation of property in Houston County to be levied annually in Houston County for public school purposes within said County as provided by Article 19, known as the special school tax amendment, or the Constitution of Alabama, for a period

of Twenty (20) years beginning October 1, 1957. Approved by vote of November 2, 1954, found in Minute Book 9, Page 281.

HOUSTON COUNTY BOARD OF REVENUE AND CONTROL

By: /s/ CARL E. SELLERS, Chairman

By: /s/ J. B. DAVIS, Member

By: /s/ W. G. BOND, Member

By: /s/ W. E. YANCE, Member

By: /s/ W. H. HICKS, Vice Chairman

I, Frankie Lamb, hereby certify that I am the Clerk of the Board of Revenue and Control of Houston County, a Political Subdivision of the State of Alabama, and as such I am the official custodian of the books and records of said Board of Revenue and Control, and that the foregoing is a true, correct and compared copy of a certain resolution passed and adopted by said Board of Revenue and Control on the 10th day of February, 1964, as the same appears of record in the office of the Board of Revenue and Control of said County in Minute Book No. 14 at Page 394 in the said records which are under my custody and are under my control.

Witness my hand and the official seal of the Board of Revenue and Control of Houston County, Alabama, on this the 6th day of April, 1966.

/s/ FRANKIE LAMB
Clerk

SEAL

[fol. 165]

EXCERPTS FROM THE MINUTES OF THE REGULAR MEETING OF THE BOARD OF REVENUE AND CONTROL OF HOUSTON COUNTY, ALABAMA, HELD ON FEBRUARY 8, 1965, AT THE COURTHOUSE, DOTHAN, ALABAMA.

State of Alabama
Houston County

The Board of Revenue and Control of Houston County, Alabama, met in regular session at the County Courthouse in Dothan, Alabama, on February 8, 1965, at 2:00 O'Clock P.M. The following members of the Board were present: J. B. Davis, J. W. Calhoun, W. H. Hicks, W. E. Yance and W. G. Bond. Absent: None.

Carl E. Sellers presided as Chairman of the meeting, and a quorum being present, the meeting opened for business. Miss Frankie Lamb was present and acted as secretary.

W. H. Hicks made a motion, seconded by J. B. Davis, and unanimously carried, to adopt the resolution setting up the tax levy for the year beginning October 1, 1964 and ending September 30, 1965.

RESOLUTION

RESOLVED, that a special tax of 25 cents on the One Hundred ($100.00) Dollars, of the assessed valuation of the property in Houston County, is hereby levied and ordered to be collected for the erection, construction, or maintenance of the necessary public buildings, bridges or incurred for the erection of public roads since the 28th day of November 1901, or that may be hereafter created for the erection, construction, or maintenance of public buildings, bridges or roads, for the tax year October 1, 1964, to September 30, 1965.

RESOLVED, that a tax of 50 cents on the One Hundred ($100.00) Dollars of the assessed valuation property in Houston County be and the same is hereby levied for gen-

eral purpose for the tax year October 1, 1964, to September 30, 1965.

RESOLVED, that a special school tax of 40 cents on the One Hundred ($100.00) Dollars of the assessed valuation of property in Houston County to be applied for school purposes is hereby levied and ordered to be collected for the year October 1, 1964, to September 30, 1965.

RESOLVED, that a special county tax of 40 cents on the One Hundred ($100.00) Dollars of the assessed valuation of property in Houston County to be applied for public hospital purposes is hereby levied and ordered to be collected for the tax year October 1, 1964, to September 30, 1965.

RESOLVED FURTHER, that the tax of 25 cents on the One Hundred ($100.00) Dollars worth of property levied, collected and derived by Houston County under Section 215 (a) of the Constitution of Alabama of 1901 be and the same is hereby ordered to be set aside by the County Depository into and as a separate fund to be known as the Road and Bridge and Public Building Fund, separate and apart from the Current Expense Fund.

[fol. 166] RESOLVED, that a special tax of 30 cents on the One Hundred ($100.00) Dollars of the assessed valuation of property in Houston County to be levied annually in Houston County for public school purposes within said County as provided by Article 19, known as the special school tax amendment, or the Constitution of Alabama, for a period of Twenty (20) years beginning October 1, 1957. Approved by vote of November 2, 1954, found in Minute Book 9, Page 281.

HOUSTON COUNTY BOARD OF REVENUE AND CONTROL

By: /s/ CARL E. SELLERS, Chairman

By: /s/ J. B. DAVIS

By: /s/ J. W. CALHOUN

By: /s/ W. H. HICKS

By: /s/ W. E. YANCE

By: /s/ W. G. BOSP

I, Frankie Lamb, hereby certify that I am the Clerk of the Board of Revenue and Control of Houston County, a Political Subdivision of the State of Alabama, and as such I am the official custodian of the books and records of said Board of Revenue and Control, and that the foregoing is a true, correct and compared copy of a certain resolution passed and adopted by said Board of Revenue and Control on the 8th day of February, 1965, as the same appears of record in the office of the Board of Revenue and Control of said County in Minute Book No. 15, at Pages 120 and 121 in the said records which are under my custody and are under my control.

Witness my hand and the official seal of the Board of Revenue and Control of Houston County, Alabama, on this the 6th day of April, 1966.

/s/ Frankie Lamb
Clerk

SEAL

[fol. 167]

In the United States District Court
For the Middle District of Alabama
Southern Division

[Title omitted]

Notice of Appeal to the Supreme Court of the United States—Filed August 5, 1966

[fol. 168] I. Notice is hereby given that Earle C. Moody, Parnell S. Lewis and James P. Hall, the plaintiffs above named, hereby appeal to the Supreme Court of the United

[File endorsement omitted]

States from the final order dismissing the action entered in this case on June 14, 1966.

II. This appeal is taken pursuant to 28 U. S. C. §1253.

III. The Clerk will please prepare a transcript of the record in this case, for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript all pleadings, motions and orders including, but not limited to, the following:

(1) Complaint filed December 27, 1965, and the exhibits attached thereto.

(2) Order entered on December 29, 1965, by Chief Judge Elbert Tuttle, United States Court of Appeals for Fifth Circuit, naming Honorable Walter P. Gewin, U. S. Circuit Judge, and Honorable Seybourn H. Lynne, U. S. District Judge, to serve with Judge Johnson on the panel to determine this action.

(3) Answer filed by defendant Roy Mayhall on January 10, 1966.

(4) Motion To Dismiss filed by defendant Richmond M. Flowers on January 13, 1966.

[fol. 169] (5) Motion To Dismiss filed by defendant William G. Hause on January 14, 1966.

(6) Motion To Dismiss filed by defendants Carl E. Sellers, James Herring, W. G. Bond, J. W. Calhoun, W. H. Hicks, W. E. Yance and J. B. Davis on January 14, 1966.

(7) Motion for leave of Court to strike from the Motion to Dismiss, filed by defendants Carl E. Sellers, James Herring, W. G. Bond, J. W. Calhoun, W. H. Hicks, W. E. Yance and J. B. Davis on January 14, 1966, the name of defendant J. B. Davis, filed on January 19, 1966.

(8) Answer filed by defendant Thomas H. Brigham filed on January 21, 1966.

(9) Order dated January 21, 1966, signed by Judge Frank M. Johnson, Jr., granting the motion filed on January 19, 1966, by Attorneys John C. Godbold for Godbold, Hobbs & Copeland, W. G. Hardwick, and Jere C. Segrest, to strike from the Motion to Dismiss filed by them in this case the name of defendant J. B. Davis, and to withdraw the appearance theretofore made by them for said defendant, and to withdraw their appearance as attorneys in this case for said defendant.

[fol. 170] (10) Order dated February 9, 1966, signed by Judge Frank M. Johnson, Jr., ordering all parties to file their briefs on or before February 23, 1966 in support of and in opposition to the several motions to dismiss theretofore filed in this case.

(11) Order dated March 23, 1966, consolidating the cases captioned *John B. Stevenson, et al.* v. *Richmond M. Flowers, et al.*, Civil Action No. 693-E, and *Earle C. Moody, et al.* v. *Richmond M. Flowers, et al.*, Civil Action No. 860-S; and ordering the date for said cases to be set for a hearing.

(12) Answer filed by defendant Alfred J. Saliba on March 30, 1966.

(13) Answer filed by defendant Richmond M. Flowers on March 30, 1966.

(14) Answer filed on behalf of Carl E. Sellers, James Herring, W. G. Bond, J. W. Calhoun, W. H. Hicks, W. E. Yance, and William G. Hause on April 4, 1966.

(15) Motion of plaintiffs for a judgment on the pleadings filed on April 8, 1966.

[fol. 171] (16) Final order dismissing the action and the opinion of the majority of the Court filed on June 14, 1966.

(17) Dissenting opinion of Judge Frank M. Johnson, Jr. filed on June 14, 1966.

(18) All docket entries.

(19) This Notice of Appeal filed by plaintiffs, and proof of service thereof.

The foregoing designation of those items constituting a transcript of the record is intended to request the transmission to the Clerk of the Supreme Court of the United States the entire record in this case, excluding the briefs and arguments of the parties.

III. The following questions are presented by this appeal:

(1) Whether the Fourteenth Amendment's due process and equal protection clauses and the Alabama Constitution are violated by Alabama's apportionment and districting of the governing body of Houston County, Alabama, whereby the population of the City of Dothan, Alabama which comprises approximately 61 per cent of the County's population, can elect only one member to the five-member County governing body.

[fol. 172] (2) Whether the Fourteenth Amendment's due process and equal protection clauses and the Alabama Constitution are violated by Alabama statutory law which totally ignores future population shifts as a factor in determining representation in the governing body for Houston County, Alabama, thereby resulting in the County's governing body being controlled by a minority with veto power over the will of the majority.

(3) Where the Alabama Legislature has provided by statute for the election of members to the Houston County, Alabama, governing body, whether, under the Fourteenth Amendment's due process and equal protection clauses and the Alabama Constitution, the Alabama Legislature can provide for gross voter inequality in the election of representatives to the County governing body whereby approximately 27 per cent of the qualified voters of the County can elect a majority of the members of the County governing body.

(4) Whether, under the Fourteenth Amendment's due process and equal protection clauses and the Alabama Constitution, the Alabama Legislature can create a county governing body and provide for the election of members thereto in gross disregard [fol. 173] of the county's population or number of qualified voters.

(5) Whether the Fourteenth Amendment's due process and equal protection clauses and the Alabama Constitution are violated by the Alabama Legislature's delegation of a substantial part of its powers to the Houston County, Alabama, governing body (an elective body) which is permanently apportioned and districted without regard to the County's population or number of qualified voters.

(6) Whether the existing apportionment and districting of the Houston County governing body is permissible under the Fourteenth Amendment and the Alabama Constitution where such apportionment and districting totally ignores the County's population or number of qualified voters and invidiously discriminates against Appellants and others similarly situated.

(7) Whether the discriminatory allocation of tax burdens and tax benefits caused by the inequality of

representation in the Houston County, Alabama, governing body under Alabama statutory law is a denial of due process and equal protection of the laws guaranteed by the Fourteenth Amendment and in violation of the Alabama Constitution.

[fol. 174] (8) Whether voter equality and representation with regard to the election of members to the Houston County, Alabama, governing body is, under the facts of this case, a justiciable matter thereby authorizing judicial intervention to correct the gross voter inequality which exists in the apportionment and districting of such County governing body.

Charles S. Rhyne, Brice W. Rhyne, Edward D. Coxen, Rhyne & Rhyne, 839 17th Street, N. W., Washington, D. C. 20006, Attorneys for Plaintiffs.

C. R. Lewis, Attorney at Law, P. O. Box 1165, Dothan, Alabama.

Proof of Service (omitted in printing).

[fol. 176]

IN THE UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF ALABAMA

SOUTHERN DIVISION

[Title omitted]

CROSS-DESIGNATION OF RECORD—Filed August 22, 1966

[fol. 177] Come now defendants-appellees, Carl E. Sellers, James Herring, W. G. Bond, J. W. Calhoun, W. H. Hicks, and W. E. Yance, by and through their attorneys of record and pursuant to Rule 12 of the Rules of The Supreme Court

[File endorsement omitted]

of the United States, cross-designate the following portions of the record to be transcribed and transmitted to the Clerk of the Supreme Court of the United States:

(1) The transcript of all testimony taken in this cause.

(2) The transcript of all proceedings, hearings, motions, pleadings, constituting any part of the proceedings in this cause not heretofore designated by the plaintiffs-appellants herein.

Euel A. Screws, Jr., Godbold, Hobbs & Copeland,
P. O. Box 347, Montgomery, Alabama.

Of Counsel

Truman Hobbs and Euel A. Screws, Jr., Godbold, Hobbs & Copeland, P. O. Box 347, Montgomery, Alabama.

W. G. Hardwick and Jere C. Segrest, Attorneys at Law, Dothan, Alabama.

[fol. 178] Certificate of Service (omitted in printing).

[fol. 179]

IN THE UNITED STATES DISTRICT COURT

DOCKET ENTRIES

Jury demand date:

Civil Action No. 860-S

EARLE C. MOODY, as Mayor of the City of Dothan, Alabama, and PARNELL S. LEWIS and JAMES P. HALL, as members of the Board of Commissioners of the City of Dothan, Alabama, and EARLE C. MOODY, PARNELL S. LEWIS and JAMES P. HALL, individually, for themselves, jointly and severally, and for all others similarly situated, Plaintiffs,

VS.

RICHMOND M. FLOWERS, Attorney General of the State of Alabama; ROY MAYHALL, Chairman of the Alabama State Democratic Executive Committee; THOMAS H. BRIGHAM, Chairman of the Alabama State Republican Executive Committee: CARL E. SELLERS, Judge of Probate of Houston County, Alabama; JAMES HERRING, Sheriff of Houston County, Alabama; WILLIAM G. HAUSE, Chairman of the Houston County Democratic Executive Committee; ALFRED J. SALIBA, Chairman of the Houston County Republican Executive Committee; and W. G. BOND, J. W. CALHOUN, W. H. HICKS, W. E. YANCE, and J. B. DAVIS, as members of the Board of Revenue and Control of Houston County, Alabama, Defendants.

Appealed

For plaintiff:

C. R. Lewis, P. O. Box 1165, Dothan, Alabama.
Wm. G. Hause, pro se, Dothan, Ala.
Godbold, Hobbs & Copeland, P.O. Box 347, Montgomery, Ala. For defendant: Sellers, Herring & Board of Revenue members.

Roy Mayhall, pro se, P.O. Box 847, Jasper, Alabama 35501.

Richmond M. Flowers, Atty. Gen. Gordon Madison, Asst. Atty. Gen. Walter S. Turner, Asst. Atty. Gen. State of Ala., Montgomery, Ala.

W. G. Hardwick and Jere C. Segrest, Penney Bldg., Dothan, Ala., also for Sellers, Herring and members of Board of Revenue.

Brown, Pointer & Pointer, 807 Massey Bldg., B'ham. 35203 for Brigham and Saliba.

[fol. 180]

DATE	PROCEEDINGS
12/27/65	Complaint filed. Summons issued.
12/29/65	ORDER of Chief Judge Elbert Tuttle, U.S. Court of Appeals for Fifth Circuit, naming Honorable Walter P. Gewin, U.S. Circuit Judge, and Honorable Seybourn H. Lynne, U.S. District Judge, to serve with Judge Johnson on the panel to determine this action.
1/ 3/66	Marshal's returns on summons and complaint. Service on Hon. Richmond M. Flowers, Atty. Gen., State of Alabama, on 12/27/65 by service on Gordon Madison, Assistant Atty. Gen. Personal service on J. B. Davis, W. H. Hicks, J. W. Calhoun, W. G. Bond, William G. Hause, James Herrin, on 12/30/65. Service on W. E. Yance by serving his wife at their residence; service on Alfred J. Saliba by service on his wife at their residence; and service on Carl E. Sellers, Judge of Probate of Houston County, by service on Mrs. Evelyn Buie, Chief Clerk, all on 12/30/65.
1/ 7/66	Copies of complaint and Judge Tuttle's order of 12/29/65 mailed by certified mail, return receipt requested, to Gov. George C. Wallace.

DATE	PROCEEDINGS
1/10/66	Answer of defendant Roy Mayhall, as Chairman of the State Democratic Executive Committee.
1/11/66	Return card for certified mail showing receipt by Gov. George C. Wallace of complaint and order of 12/29/65 on 1/10/66.
"	Marshal's additional returns on summons and complaint. Personal service on Dr. Thomas H. Brigham and on Roy Mayhall on 1/6/66.
1/13/66	Motion of defendant Richmond M. Flowers to dismiss.
1/14/66	Motion of defendant William G. Hause to dismiss.
"	Motion of defendants Carl E. Sellers, Judge of Probate; James Herring, Sheriff of Houston County; and W. G. Bond, J. W. Calhoun, W. H. Hicks, W. E. Yance, and J. B. Davis, as members of Board of Revenue and Control, to dismiss.
1/19/66	Motion of attorneys John C. Godbold, W. G. Hardwick and Jere C. Segrest to strike from motion to dismiss filed 1/14/66 the name of defendant J. B. Davis and to withdraw their appearance for said defendant.
1/21/66	Answer of Thomas H. Brigham (and motion to dismiss.)
1/21/66	ORDER of Judge Johnson granting motion of attorneys Godbold, Hardwick and Segrest to strike name of J. B. Davis from motion to dismiss and to withdraw their appearance as counsel for said J. B. Davis. (Copies of order mailed to Judges Gewin and Lynne, Atty. Gen. Flowers, John C. Godbold, W. G. Hard-

DATE	PROCEEDINGS
	wick, Jere C. Segrest, C. R. Lewis, and to J. B. Davis.)
2/ 9/66	ORDER that all parties file on or before 2/23/66 briefs in support of or in opposition to motions to dismiss. (Copies mailed to Judges Gewin & Lynne, Atty. Gen. Flowers, John C. Godbold, W. G. Hardwick, Jerre C. Segrest, C. R. Lewis, J. B. Davis, Roy Mayhall and Wm. G. Hause on 2/9/66.)
[fol. 181]	
3/23/66	ORDER consolidating this cause with Civil Action No. 693-E pursuant to Rule 42(a), Federal Rules of Civil Procedure, and setting these causes for hearing on all pending motions and on the merits on Friday, April 8, 1966, at 10 a.m. (Copies mailed to counsel and to Governor Wallace.)
3/30/66	Answer of defendant Richmond M. Flowers.
" " "	Alfred J. Saliba.
4/ 4/66	Answer of Carl E. Sellers, James Herring, W. G. Bond, J. W. Calhoun, W. H. Hicks and W. E. Yance, and William G. Hause.
4/ 8/66	Plaintiffs' motion for judgment on the pleadings.
6/14/66	Opinion of Circuit Judge Gewin and District Judge Lynne and dissent of District Judge Johnson. (Copies mailed to counsel, Judge Gewin and Judge Lynne)
6/14/66	ORDER of Judges Gewin and Lynne dismissing action without prejudice, costs taxed against plaintiffs. (Copies mailed to counsel, Judge Gewin and Lynne)

DATE	PROCEEDINGS
7/19/66	Court Reporter's Transcript of proceedings before Circuit Judge Gewin, District Judge Lynne and District Judge Johnson, at Montgomery, on April 8, 1966.
8/ 5/66	Plaintiffs' notice of appeal from order of 6/14/66.
8/22/66	Cross-designation of appeal record by defendants Carl E. Sellers, James Herring, W. G. Bond, J. W. Calhoun, W. H. Hicks, and W. E. Yance.
9/13/66	Clerk's certificate as to record.
"	" " " " exhibits.
[fol. 182]	Clerk's Certificate (omitted in printing).

[fol. 183]

SUPREME COURT OF THE UNITED STATES

No. 624—OCTOBER TERM, 1966

EARLE C. MOODY, et al., Appellants,

v.

RICHMOND M. FLOWERS, et al.

Appeal from the United States District Court for the Middle District of Alabama.

PROBABLE JURISDICTION NOTED—December 5, 1966

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted. The case is placed on the summary calendar and set for oral argument immediately following No. 430.